

CONSUMER FRAUD PREVENTION ACT OF 1995

HEARING
BEFORE THE
SUBCOMMITTEE ON CRIME
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
SECOND SESSION
ON
H.R. 1499

CONSUMER FRAUD PREVENTION ACT OF 1995

APRIL 18, 1996

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CONSUMER FRAUD PREVENTION ACT OF 1995

THURSDAY, APRIL 18, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:42 a.m., in room 2237, Rayburn House Office Building, Hon. Bill McCollum (chairman of the subcommittee) presiding.

Present: Representatives Bill McCollum, Howard Coble, Fred Heineman, Steve Chabot, Charles E. Schumer, Robert C. Scott, Zoe Lofgren, and Melvin L. Watt.

Also present: Paul J. McNulty, chief counsel; Nicole F. Robilotto, assistant counsel; and Tom Diaz, minority counsel.

OPENING STATEMENT OF CHAIRMAN MCCOLLUM

Mr. MCCOLLUM. The Subcommittee on Crime is called to order.

The subject matter today is the growing problem of telemarketing fraud and victimization of the elderly. Older Americans have rapidly become the preferred targets of fraudulent telemarketers. These victims come from an era when a person's word, like a hand shake, could be trusted. Because of the difficulty in telling a legitimate telephone pitch from an illegitimate one, they fall prey to these conniving callers.

As a result, their losses are often staggering. The Federal Trade Commission estimates that telemarketing fraud costs consumers about \$40 billion a year. One Ohio widow lost \$240,000 to over 50 different telemarketers. She believed that she was donating to charitable organizations. A 92-year-old California woman gave more than \$180,000 to telemarketers. She then lost over \$5,000 more to another telemarketer who told her he could recover her originally lost money in return for a large advance fee. Some seniors have unwittingly given their entire life savings to telefrauds.

Fraudulent telemarketers are constantly refining their cons. If one pitch doesn't work, they smoothly switch to another one. They pressure and conjoin until their overwhelmed victim finally surrenders the money. If necessary, these telephonic muggers become abusive and threatening. When they're finished wringing money from their victims, the telemarketers sell the victim's name to another operation, and the calls begin anew.

This isn't to say that telephone calls are the only way our senior citizens have been victimized by swindlers. Home improvement fraud, for example, is rapidly becoming the "con de jour" all across the country. Not only homeowners are targeted by scam artists

who convince the homeowner that repairs are necessary and even critical. They begin with minor repairs or cleanings, and then they find rotten roofs, collapsing decks, loose chimneys, termites. The list is endless.

Most of the homeowners are unfamiliar with home repair problems of physically unable to inspect themselves. Like the victims of fraudulent telemarketers, these victims are too often embarrassed to report.

The good news is that law enforcement is beginning to fight back. In December, the Department of Justice, with the aid of State and local law enforcement officials, arrested over 400 people in 15 States on fraud charges. These arrests were the results of an undercover operation known as Senior Sentinel. The sentinels were elderly volunteers who allowed law enforcement agents to record phone calls from dishonest telemarketers. The volunteers played the role of innocent victims, and the tapes were the basis of the arrests.

To strengthen the Federal attack against scam artists, my good friend from North Carolina, Mr. Heineman, has introduced legislation which speaks to this important issue. H.R. 1499, the Consumer Fraud Prevention Act, will establish forfeiture for any property obtained from proceeds of a fraud offense and will also ensure that a payment of restitution has priority over any fine or forfeiture penalties. The bill also directs the U.S. Sentencing Commission to increase the offense level for fraud crimes committed against vulnerable victims or committed from a foreign country in order to impede prosecution.

I commend the gentleman for his efforts to combat this serious problem, and I hope that today's hearing will offer a useful and important information tool on the tricks and scams of telephone con artists. I also expect the subcommittee will be enlightened on what programs currently exist to protect and educate older Americans about telemarketing fraud.

[The bill, H.R. 1499, follows:]

104TH CONGRESS
1ST SESSION

H. R. 1499

To improve the criminal law relating to fraud against consumers.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1995

Mr. HEINEMAN (for himself, Mr. COBLE, Mr. TAYLOR of North Carolina, Mr. BURR, Mr. JONES, Mrs. MYRICK, Mr. ACKERMAN, Mr. BLUTE, Mr. BONO, Mr. BRYANT of Tennessee, Mr. CALVERT, Mrs. COLLINS of Illinois, Mr. COOLEY, Mr. CUNNINGHAM, Mr. FOX of Pennsylvania, Mr. HOKE, Mr. HOLDEN, Mr. KING, Mr. LIPINSKI, Mr. MCHUGH, Mr. METCALF, Mr. PAXON, Mr. SENSENBRENNER, Mr. SMITH of Texas, and Mr. BALLENGER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To improve the criminal law relating to fraud against
consumers.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Consumer Fraud Pre-
- 5 vention Act of 1995”.

1 **SEC. 2. FORFEITURE OF FRAUD PROCEEDS.**

2 (a) CIVIL.—Section 981(a)(1) of title 18, United
3 States Code, is amended by adding at the end the follow-
4 ing:

5 “(G) Any property, real or personal, con-
6 stituting, derived from, or traceable to, any pro-
7 ceeds obtained directly or indirectly to a viola-
8 tion of section 2326. Notwithstanding any other
9 provision of law, any property forfeited under
10 this subparagraph, or the proceeds of such
11 property, shall be used, to the extent needed, as
12 determined by the Attorney General, for the na-
13 tional information hotline established under sec-
14 tion 250008 of the Violent Crime Control and
15 Law Enforcement Act of 1994 and other en-
16 forcement of section 2326.”.

17 (b) CRIMINAL.—Section 982(a) of title 18, United
18 States Code, is amended by adding at the end the follow-
19 ing:

20 “(6) The Court, in sentencing an offender
21 under section 2326, shall order that the offender
22 forfeit to the United States any real or personal
23 property constituting or derived from proceeds that
24 the offender obtained directly or indirectly as a re-
25 sult of the offense. Any property forfeited under this
26 paragraph, or the proceeds of such property, shall be

1 used, to the extent needed, as determined by the At-
2 torney General, for the national information hotline
3 established under section 250008 of the Violent
4 Crime Control and Law Enforcement Act of 1994
5 and other enforcement of section 2326.”.

6 **SEC. 3. PRIORITY FOR MANDATORY RESTITUTION.**

7 Section 2327(a) of title 18, United States Code, is
8 amended by adding at the end “The payment of an
9 amount due pursuant to such restitution shall have prior-
10 ity over the payment of any fine or the forfeiture of any
11 property under section 982(a)(6) from which such pay-
12 ment could be made or derived.”

13 **SEC. 4. SENTENCING IN CASES WITH VULNERABLE VIC-**
14 **TIMS.**

15 The United States Sentencing Commission shall
16 amend the sentencing guidelines to increase by 2 levels
17 the vulnerable victim adjustment.

18 **SEC. 5. INCREASED PUNISHMENT FOR USE OF FOREIGN**
19 **LOCATION TO EVADE PROSECUTION.**

20 The United States Sentencing Commission shall
21 amend the sentencing guidelines to increase the offense
22 level for any fraud offense by 2 levels if defendant con-
23 ducted activities to further the fraud from a foreign coun-
24 try in order to impede prosecution for the offense.

1 SEC. 6. INFORMATION ABOUT VICTIMS OF CERTAIN
2 CRIMES.

3 Any presentence report required under the Federal
4 Rules of Criminal Procedure shall include information
5 about the age of each victim of each fraud offense for
6 which a defendant is convicted.

○

Mr. Schumer is not present at the present time. So I will call on Mr. Scott, if he has any opening statements. Would you like to make one?

Mr. SCOTT. Thank you, Mr. Chairman. I don't have an opening statement, but I would want to congratulate the gentleman from North Carolina for introducing the bill. This is a—I don't know how difficult this thing is because I have a practice of responding to people who call me and I don't recognize their voice, so they say, "Hello, Robert." No one that I know ever calls me "Robert," so I know it's a sales pitch and respond by just saying, "No, thank you."

They say, "Hello, Robert."

I respond, "No, thank you."

Then they, curiously, say something or rather, and then I say, "No, I don't want a free prize. No, I don't want free anything. No, thank you."

And then they go on to someone more lucrative.

I imagine that there are many who respond a little more politely to such calls than I do and get hooked for very small amounts generally. And because they're small amounts involved, no one person can afford the prosecution. And, unfortunately, when you allow small amount to get ripped off, it doesn't take very long for some to get ripped off for huge amounts of money, when you allow the operation to be in effect.

We need to educate senior citizens that perhaps they don't need the free prizes. We need to increase money for prosecution because sometimes these are very complicated. How you catch people, how you get the information is extremely difficult.

So I want to, again, congratulate the gentleman from North Carolina for introducing the bill and assure the senior citizens that we will try to do everything we can to avoid people from profiteering, of ripping off vulnerable populations.

Mr. MCCOLLUM. Thank you, Mr. Scott.

Mr. Coble, do you have any opening remarks?

Mr. COBLE. Mr. Chairman, I'll be very brief. The gentleman from Virginia and you have pretty well touched on what I had in mind. I am pleased to have been, or to be, an original cosponsor of this proposed legislation introduced by Congressman Heineman. It's a good piece of legislation.

I think probably the convenient victims of this sort of activity addressed by this bill are for the most part senior citizens. Older Americans, it has been said, Mr. Chairman, wait for the telephone to ring because many times they're lonely. Well, I'm rapidly becoming an older American, but I don't wait for the telephone to ring. I'm not in that lot yet. In fact, I hope the telephone won't ring. But many folks are waiting for that phone to ring; they grab it immediately, and many older Americans, senior citizens, are vulnerable to this sort of thing.

And, again, I say to my friend from Carolina, my neighbor, I'm glad you saw fit to get this bill ready for our discussion today. And I appreciate, Mr. Chairman, your having called this hearing. Thank you.

Mr. MCCOLLUM. Well, thank you, Mr. Coble.

And speaking of your neighbor, Mr. Heineman, would you like to make opening remarks on your piece of legislation?

Mr. HEINEMAN. Thank you, Mr. Chairman.

"You'll never ever be anything. You're going to your grave a loser, a big loser!" A telemarketer predator yelled this abuse at a 78-year-old woman after she broke down crying and refused to give the telemarketer her American Express card account number.

Today I look forward to hearing testimony from seniors and their families who have been defrauded, as well as the law enforcement agencies apprehending and prosecuting fraud against seniors.

I'd like to extend my warmest greetings and appreciation to Raleigh resident and my constituent, Mary Ann Downs, who is showing tremendous bravery and fortitude testifying here today.

I also would like to welcome Evalyn Brendel, who is testifying for the AARP, and who is from Raleigh, as well as Bruce Thompson, special assistant to the North Carolina attorney general, who has been instrumental in prosecuting telemarketing fraud in North Carolina.

As a senior citizen myself, I was proud and privileged to introduce H.R. 1499, the Consumer Fraud Prevention Act of 1995, which is designed to protect the vulnerable in our society, especially senior citizens, from telemarketing fraud. As stated by Chairman McCollum, the FBI estimates that U.S. consumers lose over \$40 billion a year to fraudulent telemarketers. This legislation is desperately needed and is nonpartisan. That's why H.R. 1499 has 73 bipartisan cosponsors.

Recently, the North Carolina attorney general filed yet another telemarketing fraud suit against individuals who prey on senior citizens. The victim, a 71-year-old woman; the cost, her life savings of \$57,000. An elderly man in Raleigh recently lost \$37,000. In Durham, an elderly lady lost \$212,000 in a scam directed at seniors. Ms. Downs will describe how she lost over \$74,000.

Unfortunately, these are not isolated incidents. Telemarketing scams are defrauding senior citizens and those who are especially vulnerable, like the mentally retarded, all across the United States. Another appalling story is that a 79-year-old blind woman from Minnesota who lost her life savings in a sweepstakes scam, she responded to a solicitation which invited her to enter a contest for large cash prizes. Along with a small entry fee, she was required to answer a simple question. To advance in the contest, she had to answer more questions and pay additional fees. In all, she lost \$25,000.

These fraudulent activities are not performed by legitimate companies, but by those who prey on the vulnerability of certain groups. That is why I'm introducing this legislation.

The legislation, the Consumer Fraud Prevention Act, directs the U.S. Sentencing Commission to increase penalties for those who purposefully defraud the vulnerable in our society and those who utilize international borders to evade prosecution. The legislation also requires mandatory victim restitution first, then asset forfeiture. This will ensure that the fruits of crime will not be used to perpetrate another crime. Once the victim has repaid, the property seized from the defendant will be used to fund law enforcement activities to combat fraud. The Consumer Fraud Prevention Act will assist in the apprehension and prosecution of telemarketing predators and help protect the vulnerable in our society against fraud.

I look forward to the hearing. I look forward to the stories of these victims and how Congress can help better protect our seniors.

And, again, I'd like to welcome here today Ms. Downs, who, prior to my coming to Congress, was one of my constituents when I was chief of police in Raleigh.

Ms. Downs, welcome.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Heineman follows:]

PREPARED STATEMENT OF HON. FRED HEINEMAN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF NORTH CAROLINA

"You'll never, ever be anything. You're going to your grave a loser. A big loser!"

A telemarketing predators yelled this abuse at a 78 year old woman after she broke down crying and refused to give the telemarketer her American Express card account number.

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The Consumer Fraud Prevention Act of 1995 will assist in the apprehension and prosecution of telemarketing predators and help protect the vulnerable in our society against fraud. I look forward to hearing the stories of these victims and how Congress can better protect our seniors.

Mr. MCCOLLUM. Thank you, Mr. Heineman.

Ms. Lofgren, do you have any opening remarks?

Ms. LOFGREN. No, Mr. Chairman.

Mr. MCCOLLUM. Mr. Bryant, would you have any opening remarks you'd like to make?

Mr. BRYANT of Tennessee. Simply to say that I would like to associate myself with all the comments that have been advanced so far and would look forward to this hearing.

Mr. MCCOLLUM. Thank you very much.

At this time I'd like to extend a warm welcome to our first panel this morning: Ms. Mary Ann Downs and Ms. Ann Ritchey. Ms. Downs is a telemarketing victim from Raleigh, NC.

And if we could have Ms. Downs and Ms. Ritchey come forward at this time and take your seats at the table, please do so, and I'll introduce you.

Ms. Downs has bravely come here today to tell us her story about the telemarketers who victimized her. She is here to help explain how these con artists convince educated and informed citizens like herself to give them thousands of hard-earned and carefully-saved dollars.

Ms. Ritchey is the daughter of a telemarketing victim from Reston, VA. Her father has fallen prey to these swindlers. She's come here to talk about how these telemarketing criminals, while defrauding one person, have a great impact on the entire family.

And I appreciate the fact that both of these witnesses are here today. Their voices are necessary for a better understanding of this serious problem, and I welcome them today, as well as the other witnesses we have later on.

I will personally have to be at a Florida delegation caucus for a little while, but when I'm out, Ms. Downs and Ms. Ritchey, the vice chairman is Mr. Heineman, who offered the bill. So I think you'll have a very friendly vice chairman to sit here and preside.

Please, Ms. Downs, if you would tell us whatever you can impart to us to help us in your way—your entire testimony, both you and Ms. Ritchey's, will be put into the record, but you may summarize or tell us any portion of it that you wish. Please proceed.

STATEMENT OF MARY ANN DOWNS, TELEMARKETING VICTIM, RALEIGH, NC

Ms. DOWNS. Thank you.

Good morning, Congressmen and Congresswoman. My name is Mary Ann Downs and I'm 75-years-old and live in Raleigh, NC. I was a victim of telemarketers, and I would like to tell you my story.

I'm a native of Michigan, where my husband, William T. Downs, a lawyer and probate judge, and I raised our seven children. We left Detroit when Bill retired from the University of Detroit School of Law. We moved first to Guadalajara, Mexico, then to San Antonio, TX. Little more than a year after moving to Texas, Bill died in October 1990.

We had been married 48 years. It was like my world disappeared. I lived in a place where I really didn't know anyone. With Bill gone and no family or friends around, I felt terribly alone. Then I was diagnosed with breast cancer. It was an extremely vulnerable time in my life.

When the phone calls started in April 1992, they were friendly voices to talk to. They were always pleasant and seemed so genuine in their efforts to help me win the big awards: luxury cars, thousands of dollars cash, vacation trips. Most of the time I was

called by Kurt from PMI, Professional Marketing, Inc., in Los Angeles—Las Vegas. Pardon me.

Kurt and the others told me the more money I spent ordering their products, the better chance I would have to win the big payoff. I bought dozens of ballpoint pens, baseball caps that said, "No to drugs," desk clocks, money clips, cleaning supplies, shampoo—for thousands of dollars. It was junk.

After each phone conversation with Kurt, someone called to confirm my order. Every time she told me she was taping the conversation. She repeated what Kurt said to me, and also said she wanted to make sure that no promise of a specific award was made.

For a while I really did not realize how much money I was spending. They called and I authorized payment on my credit card. A couple of times I wrote checks. I always received something like pens, caps, and cleaning supplies I just mentioned. It seemed like the UPS man was at my door every day.

I also received items I did not order, like a VCR, a CD player, video camera, tennis bracelets, telephone. These just showed up. I was not told ahead of time that they were coming or that I had won a prize. One time, though, I was told by two people that I had won two mink coats. When they arrived, they were like rat hair and I gave them to Goodwill.

My first order was April 17, 1992. Soon thereafter, I was told that I had won either a Lincoln, a sapphire bracelet, \$5,000, or a 46-inch TV. I never received any of them. According to my charge account records, there were seven companies calling me, but I didn't realize it because they all sounded the same. I even recognized a familiar voice when Bob called me as a prospect for a new company, and I asked him if he had been with another company; he said, yes, he had.

At different times I was told that I was guaranteed to receive one of several awards. They never said specifically what my award was, just that it was from a group that included such things as \$20,000 in cash, lesser amounts of cash, a big screen TV, a trip to London or Paris, a sapphire and diamond tennis bracelet, a pound of gold, or a luxury car. PMI even sent me a letter confirming that guarantee, but I had to sign and return the credit card receipt and warranty invoice for \$799. They gave me a confidential code number that would be activated, and my second award announcement would be made once I returned these documents. I did as they asked.

Maybe that's how I got the tennis bracelet. I really don't know. I certainly never received cash, a big screen TV, or anything else of value.

One time I told Kurt that I had to stop; that I couldn't put any more money in it. He said he knew that I have investments that I could liquidate. I was upset that he had information about my finances, but I felt helpless. I gave in and ordered again.

Another time I told the man who called that I didn't want to spend what they wanted from me. Within hours, three different people called me saying they were supervisors and asked if I had been offended somehow. They wanted to know why I refused to place an order and told me they knew I had money.

I didn't know what to do. When I said no, it didn't make any difference. I couldn't stop it. I couldn't tell anyone. I did liquidate some of the investments my husband had so carefully made.

I couldn't believe what was happening, that I was so helpless. I am an intelligent, educated, strong person, but look what I was doing. I knew I was being taken and was too embarrassed even to tell my children.

By December 1992, my apartment was filled with the junk I had ordered and the calls were increasing. I was desperate. I filled 19 identical boxes with pens, clocks, shampoo, et cetera, and these were the Christmas presents for each of my kids, their spouses, and children. The looks on their faces—they thought I was crazy.

That's how I revealed what I was caught up in, but I still would not really talk about it. I just said I had been scammed. I felt so dumb and couldn't bear to tell them how stupid I had been.

Then in January 1993, two of the companies told me that I won a luxury car. One of them said that I was originally the second prize winner, that the person who had actually won the Lexus had moved to New York and they had to have a winner in Texas. So I won. I was so sure it was true; I called my kids and told them how I had really won. But I never got either car.

Fortunately, on March 1, 1993, I left San Antonio and moved to Raleigh. That's how I finally stopped—but not immediately. Mail was forwarded from PMI dunning me for a telephone order they claimed I made after I left San Antonio. That was false and I did not pay them.

On October [sic] 15 and 16, I received several phone calls at my new home in Raleigh from a man identifying himself as Virgil Hastings. He said the operator in San Antonio gave him my number and advised that I contact the operator to protect myself, so it didn't happen again.

He said he was an attorney with the Federal court in California. He told me that "the group" I had dealt with in Texas had their funds and business records impounded by the court, and the records showed that I was a victim of their scam.

He told me he could recover my money, but I had to send \$960 to Phillip Slattery in Livermore, CA, by Western Union. He gave me his address and telephone number. I was leery, so I called my son-in-law, who is a lawyer, and asked him to call Virgil Hastings and verify that he was legitimate.

Then I didn't wait. Virgil had told me exactly what to say to Western Union, and I called them. They tried to talk me out of sending the money, asking if I knew the person I was sending it to. I didn't listen and sent the money. On March 17, Virgil called again and told me there was an additional fee of \$1,000 to Del Rose of Hayward, CA, to get my money back. I sent it.

On March 19, Virgil called and told me, because they could document that I had spent \$55,000 with "the group," they would have to have an additional \$2,550 from me. He told me that the post office in Raleigh had a package with \$52,000 to be delivered to me in an hour and a half, if I sent the fee.

After all I had already spent, \$2,550 to get back the rest was a bargain. I contacted Western Union again and sent it. No package came from the post office. I never heard from Virgil again. I kept

trying the phone number he gave me. It was always either busy or no answer. Days later, someone finally answered and told me it was a pay phone.

That was it. Then I told my daughter the whole story. When we went through my notes and receipts, we saw that I lost over \$74,000 to the telemarketers from April 1992 to March 1993. There were five companies out of Las Vegas, one in Louisiana, and one in Utah. According to the name on the charge card statements, I ordered from PMI only six times, but I'm sure I talked to Kurt much more often than that, and some of the company names were news to me.

I live on the investments my husband made. I gave the telemarketers a couple of years of income. My husband worked very hard for that money, and I felt very guilty losing it. Fortunately, I was able to continue to make my living expenses.

The emotional damage has been greater. The terrible harm to my confidence, my self-esteem, my belief in myself—that has taken much longer to recover.

Coming here today and telling my story has helped me regain part of myself that they took away. They cheated me financially, psychologically, and in every way. I will do anything I can to stop them from doing the same to others.

Thank you for caring about this terrible crime.

[The prepared statement of Ms. Downs follows:]

PREPARED STATEMENT OF MARY ANN DOWNS, TELEMARKETING VICTIM, RALEIGH, NC

Good morning. My name is Mary Ann Downs. I am 75 years old and live in Raleigh, North Carolina. I was a victim of telemarketers, and I would like to tell you my story.

I am a native of Michigan, where my husband, William T. Downs - a lawyer and probate judge - and I raised our seven children. We left Detroit when Bill retired from the University of Detroit School of Law. We moved first to Guadalajara, Mexico, then to San Antonio, Texas. Little more than a year after moving to Texas, Bill died in October 1990.

We had been married for 48 years. It was like my world disappeared. I lived in a place where I really didn't know anyone. With Bill gone and no family or friends around,¹ I felt terribly alone. Then I was diagnosed with breast cancer. It was an extremely vulnerable time in my life.

When the phone calls started in April 1992, they were friendly voices to talk to. They were always pleasant, and seemed so genuine in their efforts to help me win the big awards: luxury cars, thousands of dollars cash, vacation trips! Most of the time, I was called by Kurt from PMI, Professional Marketing, Inc. in Las Vegas.

Kurt, and the others, told me that the more money I spent ordering their products, the better chance I would have to win the "big pay-off." I bought dozens of ballpoint pens, baseball caps

that said "No to Drugs," desk clocks, money clips, cleaning supplies, shampoo. For thousands of dollars. It was junk.

After each phone conversation with Kurt, some else called to confirm my order. Every time, she told me she was taping the conversation. She repeated what Kurt said to me, but also said she wanted to make sure that no promise of a specific award was made.

For awhile, I really did not realize how much money I was spending. They called and I authorized payment on my credit card. A couple of times I wrote checks. I always received something, like the pens, caps and cleaning supplies I just mentioned. It seemed like the UPS man was at my door every day.

I also received items I did not order, like a VCR, a CD player, video camera, tennis bracelets, telephone. These just showed up; I was not told ahead of time that they were coming or that I had won a prize. One time, though, I was told that I had won two mink coats. When they arrived, they were like rat hair and I gave them to Goodwill.

My first order was April 17, 1992. Soon thereafter, I was told that I had won either a 1992 Lincoln, a sapphire bracelet, \$5000 or a 46 inch TV. I never received any of them. According to my charge account records, there were seven companies calling me, but I didn't realize it because they all sounded the same. I even recognized a familiar voice when "Bob" called me as a prospect for a new company, and I asked him if he had been with another company; he said yes, he had.

At different times I was told that I was "guaranteed" to receive one of several awards. They never said specifically what

my award was, just that it was from a group that included such things as \$20,000 in cash, lesser amounts of cash, a big screen TV, a trip to London or Paris, a sapphire & diamond tennis bracelet, a pound of gold or a luxury car. PMI even sent me a letter confirming that guarantee, but I had to sign and return the credit card receipt and "warranty invoice" for \$799. They gave me a Confidential Code Number that would be "activated" and my second award announcement would be made once I returned these documents. I did as they asked.

Maybe that's how I got the tennis bracelet. I really don't know. I certainly never received cash, a big screen TV, or anything else of value.

One time I told Kurt that I had to stop, that I couldn't put any more money in. He said he knew that I had investments that I could liquidate. I was upset that he had information about my finances, but I felt helpless. I gave in and ordered again.

Another time, I told the man who called that I did not want to spend what they wanted from me. Within hours, three different people called, saying they were supervisors, and asked if I had been offended somehow. They wanted to know WHY I refused to place an order, and told me they knew I had money.

I didn't know what to do. When I said "No," it didn't make any difference. I couldn't stop it. I couldn't tell anyone. I did liquidate some of the investments my husband had so carefully made.

I couldn't believe what was happening. And that I was so helpless. I am an intelligent, educated, strong person. But look

what I was doing! I knew I was being taken, and was too embarrassed to even tell my children.

By December 1992, my apartment was filled with the junk I had ordered and the calls were increasing. I was desperate. I filled 19 identical boxes with the pens, clocks, shampoo, etc. - and these were the Christmas presents for each of my kids, their spouses and children. The looks on their faces - they thought I was crazy!

That's how I revealed what I was caught up in. But I still would not really talk about it - just said that I had been scammed. I felt so dumb and couldn't bear to tell them how stupid I had been.

Then, in January 1993, two of the companies told me that I'd won a luxury car. One of them said that I was originally the second prize winner, that the person who had actually won the Lexus had moved to New York and they had to have a winner in Texas, so I won! I was so sure it was true, I called my kids and told them how I'd really won. But I never got either car.

Fortunately, on March 1, 1993 I left San Antonio and moved to Raleigh. That's how I finally stopped. But not immediately. Mail was forwarded from PMI dunning me for a telephone order they claimed I made after I left San Antonio. That was false and I did not pay them.

On March 15 & 16, 1993, I received several telephone calls at my new home in Raleigh from a man identifying himself as Virgil Hastings. He said the operator in San Antonio gave him my number, and advised that I contact the operator to protect myself, so it didn't happen again.

He said he was an attorney with the Federal Court in California. He told me that the "group" I had dealt with in Texas had their funds and business records impounded by the court, and the records showed that I was a victim of their scam.

He told me he could recover my money. But I had to send \$960 to Phillip Slattery in Livermore, California, by Western Union. He gave me his address and telephone number. I was leery, so I called my son-in-law, who is a lawyer, and asked him to call Virgil Hastings and verify that he was legitimate.

Then, I didn't wait. Virgil had told me exactly what to say to Western Union, and I called them. They tried to talk me out of sending the money, asking if I knew the person I was sending it to. I didn't listen and sent the money. On March 17, Virgil called again and told me there was an additional fee of \$1000 to Del Rose of Hayward, California to get my money back. I sent it.

On March 19, Virgil called and told me that, because they could document that I had spent \$55,000 with the "group," they would have to have an additional \$2550 from me. He told me that the post office in Raleigh had a package with \$52,000 to be delivered to me in 1 1/2 hours if I sent the fee.

After all I had already spent, \$2550 to get back the rest was a bargain. I contacted Western Union again and sent it. No package came from the post office. I never heard from Virgil again. I kept trying the phone number he gave me; it was always either busy or no answer. Days later, someone finally answered, and told me it was a pay phone.

That was it. Then I told my daughter the whole story. When

we went through my notes and receipts, we saw that I lost over \$74,000 to the telemarketers from April 1992 to March 1993. There were five companies out of Las Vegas, one in Louisiana, and one in Utah. According to the name on the charge card statements, I ordered from PMI only six times, but I'm sure that I talked to Kurt much more often than that - and some of the company names were new to me!

I live on the investments my husband made. I gave the telemarketers a couple of years of income. My husband worked very hard for that money and I felt very guilty losing it. Fortunately, I was able to continue to make my living expenses.

The emotional damage has been greater. The terrible harm to my confidence, my self-esteem, my belief in myself. That has taken much longer to recover.

Coming here today and telling you my story has helped me regain part of myself that they took away. They cheated me financially, psychologically, and in every way. I will do anything I can to stop them from doing the same to others.

THANK YOU for caring about this terrible crime.

Mr. HEINEMAN [presiding]. Thank you, Ms. Downs.
Ms. Ritchey.

**STATEMENT OF ANN MARIE RITCHEY, DAUGHTER OF
TELEMARKETING VICTIM, RESTON, VA**

Ms. RITCHEY. Thank you very much for the invitation to speak with you this morning regarding the issue of telemarketing fraud and the victimization of the elderly. My name is Ann Marie Ritchey. My father has been a victim of such fraud.

A short time after my mother died three years ago, my father began getting more and more mail fraud, which we all call "junk mail." For most people, this junk mail is just thrown in the garbage, but my father faithfully answered the question, "Do you want to win a new car, a fabulous vacation, thousands of dollars," and more. My father sent in many \$10, small amounts, just to keep on the list of winners. My father would go to church and give the pastor and his friends a weekly update on all of his "winnings." Soon my father's friend started to turn away from him; they did not want to hear any more stories about his winnings.

But then the telemarketing fraud started. I'm talking about the hard-sell telemarketing where "no" is not taken. The telemarketing scams used every angle to get my father's money. The scam took several different forms: buy cheap merchandise that could be claimed as tax deductible, the old "say no to drugs" pens and cups, and what-not, that my father would give to the elementary school. We're talking hundreds of dollars for something less than a pen. I don't know if they worked. A package deal for magazines at so-called discount rate, or the claim that my father had won many thousands of dollars.

In the latter scam, the call usually came on a Friday and most times would require the money, always a certified check, to be sent by third-party carriers, not the mail, but third-party carriers, like Federal Express. In this way, you see, the money is in the criminal's hands on Saturday, before second thoughts take over or the transaction is mentioned to a family member.

My father just happened to mention to me on a Saturday that he had won \$50,000. I asked him all the usual questions, like: who is it from? Do you have anything in writing? How did you get chosen to win? Where are they located? And did you have to pay anything for this winning?

My father said they did not say who they were; he didn't have anything in writing. They were located in Las Vegas. We found out later that most of the calls were from Las Vegas. And, yes, he did have to pay in order to get his winnings, but, you see, he was told it was a calculated amount, that if he paid the money to a charitable organization, that that would suit the IRS instead of paying taxes against the money. This was over \$10,000 out the door. Since my father refused to place a stop payment on the check, I went to the bank and explained the situation and placed a stop on the check, as the power of attorney for my father.

Needless to say, the impact to our family has been considerable. My father has become very angry with his children, and his children have lost a certain amount of respect for him. The children even changed his telephone number to a nonpublished telephone

number to try to protect him. Without his knowledge, we changed his telephone number. But he found out about this a short time later and refused to have a nonpublished number because his friends, then, would not be able to find him.

My brothers and I tried to get help from various government authorities to report the telemarketing fraud and tried to find ways to protect my father. I tried my county police, actually the Fairfax County Financial Fraud Unit. They said that they could not be of any help because it was by telephone or interstate and that the money was sent out of state, interstate. They referred me to the FBI. However, after I was transferred to a number of different departments or units or squads, or whatever they're called at the FBI, I left a message on the voice mail of the supposedly appropriate department, but I never got a call back. The agency that I found most helpful was the postal inspector's office.

My brother contacted the Commonwealth of Virginia's State Attorney's Office, but was told that it was out of its jurisdiction and they could not help. My brother also contacted the North Carolina State Attorney's Office because my brother is a resident of North Carolina. They were very responsive, but could not help my father because he did not live in North Carolina.

The dilemma we had as a family is, Who owns this problem? The criminals have done their homework. Individuals are hurt; families are hurt, but the criminals just take the money and run to the next telephone room in Nevada. I am not convinced that my father is no completely knowledgeable about the various types of scams. I am not sure that as a family we know how to react to help my father, except by changing his telephone number, which only isolated him from his friends; preview all of his mail, and control the check-book—all of which is only hurtful to my father.

I think that once your name is written in an obituary as a surviving spouse, you are then placed as fair game to the criminals. This is at a time when people are at their lowest and most vulnerable. As a family, we tried discussing the problem, cajoling, arguing, presenting copies of newspaper articles about the telemarketing scams. But my father insisted that his matters were different. Almost as a last resort, we asked my father to explain to the callers that he was taping the conversation, so he could listen to it again to make sure that he got all of the instructions correct. My father did this and was finally convinced that these were criminals because they immediately hung up on him.

In summary, I have tried to give you the background of some of the scams used against my father. I have tried to briefly describe the impact to our family. I believe there is much work to be done in this area to stop this horrible victimization of the elderly. I don't have the solutions, but I hope the U.S. Government can work cooperatively with the State governments to clearly define ownership of the problem of telemarketing fraud. I trust that after the ownership is accepted, wherever that might be, and the problem defined, then the solutions can be found.

Thank you all very much for your time this morning.

[The prepared statement of Ms. Ritchey follows:]

PREPARED STATEMENT OF ANN MARIE RITCHEY, DAUGHTER OF TELEMARKETING
VICTIM, RESTON, VA

Thank you very much for the invitation to speak with you this morning regarding issue of telemarketing fraud and victimization of the elderly. My name is Ann Marie Ritchey. My father has been a victim of such fraud.

A short time after my mother died three years ago, my father began getting more and more mail fraud--which we call "junk mail". For most people, this junk mail is just thrown away in the garbage; but my father faithfully answered the question "Do you want to win a (new car, fabulous vacation, thousands of dollars, etc.)?". My father sent in many \$10 dollars just to be kept on the list of winners. My father would go to church and give the pastor and his friends a weekly update on all of his "winnings". Soon my father's friends started to turn away from him; they did not want to hear any more of his stories about his "winning."

But then the telemarketing fraud started. I am talking about the "hard sell" telemarketing where "No" is not taken. The telemarketing scams used every angle to get my father's money. The scam took several different forms: buy cheap merchandise that could be claimed as "tax deductible", a "package deal" for magazines at a so-called discount rate; or the claim that my father had won many thousands of dollars. In this latter scam, the call usually came on a Friday and most times would require the money, always a certified check, be sent by third-party carriers (like Federal Express). In this way you see, the money is in the criminals hands on Saturday before second thoughts take over or the transaction is mentioned to a family member. My father just happened to mention to me on a Saturday that he had won \$50,000.00. I asked him all the usual questions, like Who was it from?, Do you have anything in writing?,

How did you get chosen to win?, Where are they located? and Did you have to pay anything for this winning? My father said they did not say who they were, he did not have anything in writing. They were located in Las Vegas (we found out later that most of his calls were from Las Vegas). And yes he did have to pay in order to get his winning--but it was only a calculated amount that he had to pay a charitable organization instead of paying taxes on the money. This was over \$10,000 out the door. Since my father refused to place a "stop payment" on his check, I went to the bank and explained the situation and place a stop on the check as power of attorney for my father.

Needless to say, the impact to our family has been considerable. My father has become very angry with his children and his children have lost a certain amount of respect for him. The children even changed his telephone number to a "non-published" telephone number to try to protect him from the criminals. This too was found out by my father a short time later.

My brothers and I tried to get help from various government authorities to report the telemarketing fraud and try to find ways to protect my father. I tried my county police, actually the Fairfax County Financial Fraud unit. They said they could not be of any help because it was by phone (interstate) and the money was sent out of the state (interstate). They referred me to the FBI. However, after I was transferred to a number of different departments at the FBI, I left a message on the voicemail of the supposedly appropriate department, but never received a call back. The government agency that I found most helpful was the Postal Inspector's Office.

My brother contacted the Commonwealth of Virginia's State's Attorney office, but was told it was out of its jurisdiction. My brother also contacted the North Carolina State's Attorney--they were very responsive but could not help because my father did not in North Carolina.

The dilemma we had as a family is who "owns" this problem. The criminals have done their homework. Individuals are hurt; families are hurt; but the criminals just take the money and run to the next telephone room in Nevada. I am not convinced that my father is now completely knowledgeable about the various types of scams; I am also not sure that as a family we know how to react to help my father (except by changing his telephone number which only isolates him from friends, preview his mail and control the checkbook--all of which are only hurtful to my father).

I think once your name is written in an obituary as a surviving spouse you are then placed as fair game to the criminals. This is at a time when people are at their lowest, most vulnerable. As a family, we tried discussing the problem, cajoling, arguing, presenting copies of newspaper articles about the telemarketing scams. But my father insisted that his matters were "different". Almost as a last resort, we asked my father to explain to the callers that he was taping the conversation so he could listen to it again to make sure he got all the instructions correct. My father did this and was finally convinced these were criminals because they immediately hung up on him.

In summary, I have tried to give you the background of some of the scams used against my father. I have tried to briefly describe the impact to our family. I believe there is much work to be done in this area to stop this horrible victimization of the elderly. I don't have the solutions, but I hope the United States government can work cooperatively with the State governments to clearly define ownership for the problem of telemarketing fraud. I trust that after the ownership is accepted and the problem defined then the solutions can be found.

Thank you all for your time this morning.

Mr. HEINEMAN. Thank you.

Apparently, the psychological loss, the psychological damage, has as much of an impact as the monetary damage and perhaps more. We can restore your money, but we can't restore your faith in people and in society.

Ms. Downs, can you tell us from—and it may be a little difficult to tell us, but can you recount your feelings as you traveled along this road of the fraudulent calls from the first one you got up to the point where you—psychologically, how you felt, why you didn't cut it off at the first time.

Ms. DOWNS. That's the big point: why didn't I cut it off the first time. I was lonesome. But it got so that I was afraid to answer the telephone when it rang, but it might be one of my kids calling. So what do you do?

Mr. HEINEMAN. When did you first contact your family and tell them that you had suspicions? How many—

Ms. DOWNS. December 1992.

Mr. HEINEMAN. That was how long from the time you got your first call?

Ms. DOWNS. I started early in 1992.

Mr. HEINEMAN. Early in 1992. And when you felt that there was something wrong, how long did it take you to call your family?

Ms. DOWNS. Probably 3 or 4 months.

Mr. HEINEMAN. Three or four months. So you felt that—what really was your feeling that you didn't want to tell them immediately?

Ms. DOWNS. I suppose I was ashamed, embarrassed.

Mr. HEINEMAN. You're not alone. That is the primary reason why people don't reach out to family members, and I'm sure today there are four or five times more people that have not told anyone about it than have because they feel embarrassed and ashamed.

With these prizes that you received, VCR's, and what-not, did you ever check your credit card to see whether they used your credit card to—

Ms. DOWNS. They didn't ever illegally use my card. It was every time I had authorized payment. That was just sweetening the kitty, sending these small valuable prizes.

Mr. HEINEMAN. Well, let me tell you, they do have a very sophisticated network. I know my wife died in 1986. I started getting calls. I started getting calls from California. And they were very tempting. I didn't bite, but they catch you in a period of mourning, I'm sure.

Ms. DOWNS. Sure.

Mr. HEINEMAN. Is that the same, Ms. Ritchey, with your father's situation?

Ms. RITCHEY. I believe that my father began getting the phone calls a very short time after my mother died, though we were told as children very early on with all of his prizes, but what my father did not believe is he didn't believe that these were cheap. They were not bargains. He was paying for every winning that he got. I mean, he got a camcorder that he thought was just wonderful, but it was broken.

Ms. DOWNS. Mine didn't work, either.

Ms. RITCHEY. No, it didn't work. It didn't work.

But what was very sad was that he didn't have these feelings that he was embarrassed because he really did—he felt wonderful about himself. Because it was at a very low time, because people were calling him and he was “winning,” it gave him some self-worth that he was a “winner.” And he would tell us, and that's how the hurtful experiences to the family, because then we are arguing and telling my father that he doesn't understand. How can you tell your father that he doesn't know or he doesn't see the whole picture? And then it got to the point where then at that point he didn't mention to us what he had agreed or bought, unless we got something as a gift that was a very cheap watch or a—I don't know what, plastic something or other.

But it was at the very, very lowest time. I honestly believe that these criminals do a great deal of homework. This is not random. Perhaps it starts with the mail, junk mail fraud, and if you respond, maybe if you respond religiously, you're then put on another list and made the victim; or, as I believe, that the people who are mentioned in an obituary, that you are then targeted. I think it's extremely focused activity.

Mr. HEINEMAN. Ms. Downs, how many times did they ask you to and did you respond to send money by way of Western Union?

Ms. DOWNS. The Western Union bit was just the recovery guy at the end. The other times it was all credit card.

Mr. HEINEMAN. Ms. Ritchey, did your father have any transactions with Western Union other than when they told him to check out that—

Ms. RITCHEY. I don't know if Western Union was involved. I know that they would send couriers to pick up certified checks from him, that he would have to use the Federal Express next-day delivery, but when he actually transmitted money via Western Union, I do not know.

Mr. HEINEMAN. I see my time has expired. Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

I assume that they use Federal Express to avoid the mail fraud prosecution; is that right?

Ms. RITCHEY. That's my assumption, yes.

Mr. SCOTT. And I guess I'd ask counsel whether or not the mail fraud—or determine whether the mail fraud statutes could be amended to include other things other than the Federal mail, and we're just going to look at that idea. I think the testimony has just pointed out the need for some kind of action. I don't know exactly what we can do to eliminate it, but we certainly ought to make it a lot more difficult for people to sit on the phone all day ripping people off in small amounts, increasing to much larger amounts. Part of the problem is trying to find out who they are.

Mrs. Ritchey, you indicated that you put a stop payment on the check?

Ms. RITCHEY. Yes.

Mr. SCOTT. What happened to the check itself? Did it go back to whoever tried to cash it?

Ms. RITCHEY. It was a certified check that had been mailed to a charitable organization, to a post office box in California. What happened to the check, whether it had been attempted to be cashed

or whether it had been returned to the bank, to my father, I don't know.

Mr. SCOTT. Did he ever get his money back?

Ms. RITCHEY. It was—the check was stopped. On that particular instance that I was aware of, the stop payment is good for 1 year. That one year is up next month. So we're going to have to look at either changing, I believe, changing his account number or again notifying the bank as a reminder that this check then will be over a year old and it should not be honored.

Mr. SCOTT. If the check comes back, there ought to be a paper trail identifying who tried to cash it. Do you know who you're dealing with on the other end?

Ms. RITCHEY. No, I do not. I know of—I know the address and I know the name of the charitable organization to which the money was sent, but the caller was from Las Vegas, saying that—identifying this California address was where, as a charitable organization, where the money would go to.

Mr. SCOTT. Well, part of the problem is, if you decide the guy's committed a crime and take out a warrant, sending of a sheriff out into cyberspace doesn't do any good, and you need—but there ought to be a paper trail. The bank ought to know who they're dealing with because they had to deposit it in somebody's account.

Ms. RITCHEY. But my question is—I would be more than happy to gather all of the evidence and all of the paper trail that is available to my father or available to me, but who would I work with to prosecute? I mean, who—

Mr. SCOTT. Are you in a situation now where there's no law enforcement agency helping you prosecute?

Ms. RITCHEY. That's correct.

Mr. SCOTT. OK.

Ms. RITCHEY. I could find no one who accepted the ownership that it's in their patch.

Mr. SCOTT. Well, I can assure you that before the day is over we're going to find somebody somewhere. [Laughter.]

Now, Ms. Downs, you said some people—there were charges on your charge account?

Ms. DOWNS. Yes.

Mr. SCOTT. Do we know who the people are on the other side?

Ms. DOWNS. As I began to be aware of this being a scam, I took careful notes of the people who called me and from where—they were mostly from Las Vegas.

Mr. SCOTT. Well, somebody—the bank has to deal with at some point or another a live individual. And do we have a live individual on the other end that the bank can identify for us?

Ms. DOWNS. I don't know at this point. This was all in 1993, and I understand there was a raid in 1993.

Mr. SCOTT. So you have a law enforcement agency helping to prosecute in your situation?

Ms. DOWNS. Not really. My daughter is district attorney in Clinton County, NY, and she wrote many letters to the attorney general, and in every case it came back that they're no longer in business; they're no longer in business. It doesn't mean the people themselves aren't in business.

Mr. SCOTT. Yes, but, see, that's—at some point a business can go out of business——

Ms. DOWNS. Yes.

Mr. SCOTT [continuing]. But you've got some live individuals who did business with the bank as part of this fraudulent scheme, and when we send the sheriff out for somebody, you've got to get a live individual.

Ms. DOWNS. Well, I have the names of people who called me and the organization they called from.

Mr. SCOTT. You mean, you have the names they gave you?

Ms. DOWNS. That's right. That's right.

Mr. SCOTT. Which may not be the same as a live individual.

Ms. DOWNS. I called the FBI after the recovery guy kept calling me, and they sent a man out to my house, but I never heard back from him.

Mr. SCOTT. Well, I guess we have a little work to do with this revelation. I appreciate the time, Mr. Chairman.

Mr. HEINEMAN. Mr. Bryant.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman.

Let me add my commendation to both of you for coming and exposing yourself to testify about what's happened to you.

Of course, we're all very familiar—we've seen a number of television shows, and some of us have had backgrounds in law enforcement who have worked in this area. And, indeed, I think you've hit the nail right on the head; these folks are very good in what they do.

Ms. DOWNS. Yes.

Mr. BRYANT of Tennessee. They know how to do it. They move around quickly. I know my experience with them was that they operated interstate and, therefore, with the small amounts of money generally involved, you did not have local jurisdiction. So the Federal jurisdiction had to be imposed and that's why I'm concerned with our postal statutes and our telephone fraud statutes. There should be, certainly in your case, Federal jurisdiction through the telephone fraud with the FBI on that. And I think as we go through today's hearings with some of their representatives, we'll see that they may well be the proper party for this.

In any type of legislation that we pass that affects criminal law, our goals are to minimize the occurrence of this crime by making a deterrent or by preventing it, as well as to catch those people, and when we do to prosecute them, retribution-wise punish them, and to recover, hopefully, something that we can give back to the victims. Now in this case I think—and I want to commend my colleague from North Carolina for raising the priority of the back end of that in terms of moneys recovered going to the victims first over even fines and those kinds of things that typically would revert to the Government. I think that's very important in your case, again, when you consider whose life savings are affected. And when we can recover money, I like this part of the bill very much and was proud to be a cosponsor of this bill.

But all those things aside, these folks aren't the kind who are going to be deterred, you know, like young kids and using drugs and things. They know what they're doing and they think they can beat the law. So while we want to punish them when we catch

them, we want to recover money and give back to the victims, the front end is very important in this case, and that's why I want to hear from you all in terms of preventing this. And, again, put the criminals, the crooks—these are the lowest class; these are right there with child molesters, as far as I'm concerned—put those aside and let's educate.

How do we educate—Ms. Ritchey, in your case, I want to ask you, first, as a daughter or a son—I've got an elderly mother—how do we prevent our elderly parents, particularly in that window of time after, let's say, they become a widow or widower, a year or so when their self-esteem may be down, or whatever, how do we—as a child of an elderly parent, how can we do that? What did you all do once you found out?

Ms. RITCHEY. Well, once we found out—I thank you for raising that issue because it's been a big question to my family. The concern—he wouldn't listen. My father would not listen to us as family members. And for my father, or maybe for his generation, we wanted someone in authority, a police officer, an FBI agent—I mean, I don't know a person of authority to be the one that is giving this news of this is against the law; this is not legal; this is wrong.

But how that is communicated, if there is—I mean, in the case of my father, it was upon the death of my mother that it began. If it's someone sending leaflets that go to surviving people that is, "oh, by the way, this is information, communication," gosh, I don't know. I don't know.

Mr. BRYANT of Tennessee. Is there a role—Ms. Downs, maybe—we've got to respect each other's lives, but is there a role that children can play in monitoring the mail and getting involved there and making sure what goes on, particularly in that period of time following a death or something, where people are particularly vulnerable?

Ms. DOWNS. Well, in my case it wouldn't have worked because all my children are on the east coast and I was out in San Antonio.

Mr. BRYANT of Tennessee. What would you tell your contemporaries how to avoid this kind of situation? You've been very good in coming here, but what would you tell the—you know, don't give out your credit card numbers—

Ms. DOWNS. That's right.

Mr. BRYANT of Tennessee. [continuing]. Your Social Security number, things over the telephone?

Ms. DOWNS. And don't buy anything over the phone.

With all due respect to Congressman Heineman, I get frequent calls from the different so-called police groups. None of them are illegal, I don't think, but I get lots of them. But now I just say no and hang up or just hang up.

Mr. BRYANT of Tennessee. I like your idea about—and, again, these are real localized responses, but your idea of telling your parent to record these phone conversations and tell the caller that you're doing this. It's a good idea. We can't make that law, but, I mean—

Ms. DOWNS. One of my sons said the same reaction that you have. He just got my testimony, and he's very upset wondering what they could have done to prevent this.

Mr. BRYANT of Tennessee. And I've exhausted my time. But it is difficult because you're independent and you don't want people telling you what to do——

Ms. DOWNS. Yes.

Mr. BRYANT of Tennessee [continuing]. But, again, I think we have an obligation just like you took over and watched your son——

Ms. DOWNS. Yes.

Mr. BRYANT of Tennessee [continuing]. In times when he was vulnerable.

I appreciate what both of you are doing today. Thank you.

Mr. HEINEMAN. Thank you, Mr. Bryant.

Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I just wanted to apologize to these witnesses whose testimony I missed because I had another hearing, and particularly to Ms. Downs, whose complete testimony I missed, and even though she's from my State. So I want to welcome her to Washington and apologize to you.

I think I will defer questions since I did not hear the testimony. I yield back the balance of my time.

Mr. HEINEMAN. Thank you, Mr. Watt.

Mr. Chabot.

Mr. CHABOT. I'll be very brief. I just wanted to also apologize for not being here. I was giving a speech on the floor and had another meeting.

I will take the time to read all your testimony here. I'll have my staff do that as well. And it's very courageous of you to be willing to come forward here and to tell us what you went through. I hope that your testimony will help many others avoid the same sort of terrible situations that you suffered.

And, finally, I'd just like to reiterate what Mr. Bryant of Tennessee here said. In my mind, these scam artists who are ripping off senior citizens are right up there—or down there, depending on how you want to look at it—with child molesters. And we ought to do something about this, and I commend Mr. Heineman for making an attempt to do something to protect people from these terrible scams.

Thank you very much for coming here.

I yield back the balance of my time.

Mr. HEINEMAN. Thank you, Mr. Chabot.

I'd like to yield now to the ranking member of the Crime Subcommittee, Mr. Schumer.

Mr. SCHUMER. Thank you, and I want to apologize to the witnesses and the members for being late. The antiterrorism bill is on the floor today and we had some things to do with that.

First, I would ask unanimous consent that my statement, my opening statement, be placed in the record.

Mr. HEINEMAN. Without objection.

[The prepared statement of Mr. Schumer follows:]

PREPARED STATEMENT OF HON. CHARLES E. SCHUMER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW YORK

THANK YOU, MR. CHAIRMAN.

**THIS IS AN IMPORTANT HEARING AND I THANK YOU FOR
HOLDING IT.**

**BUT LET'S BE VERY CLEAR ABOUT WHAT WE ARE
EXAMINING HERE TODAY. THIS IS NOT A HEARING ON
"TELEMARKETING." IT IS A HEARING ON "TELEMARKETING
FRAUD."**

THAT IS AN IMPORTANT DISTINCTION.

**TELEMARKETING IS A INDUSTRY WITH A LONG HISTORY.
FOR THE MOST PART, IT IS A HONEST AND USEFUL SERVICE TO
BUSINESS AND CONSUMER ALIKE. IT EMPLOYS OVER 3.4
MILLION AMERICANS, AND AMERICANS SPEND ABOUT \$500
BILLION ANNUALLY THROUGH TELEMARKETING.**

**BUT THERE ARE CROOKS WHO FEED AT THE MARGINS OF
THIS INDUSTRY. THESE ARE THE CON-MEN WHO TRADE ON
THE BONA FIDES OF HONEST BUSINESS TO PREY ON THE
VULNERABLE AND THE GULLIBLE.**

THAT IS WHAT WE ARE FOCUSING ON TODAY – OLD-FASHIONED FRAUD BROUGHT TO INCREDIBLE DEPTHS BY SOME OF THE MOST RUTHLESS AND DESPICABLE CRIMINALS AMERICA HAS EVER SEEN.

THESE CRIMINALS ARE SMART – THEY USE THE LATEST TECHNOLOGY TO ADVANCE THEIR SCHEMES.

THEY ARE RUTHLESS – THEY TAKE ADVANTAGE OF THOSE WHO CAN LEAST AFFORD THEIR DEPREDACTIONS.

AND THEY ARE LIKE A SWARM OF ARMY ANTS – BUILDING UP HUGE PILES OF LOOT FROM HUNDREDS OR THOUSANDS OF TINY BITES. IN A TYPICAL TELEMARKETING FRAUD SCHEME, EACH SINGLE CASE MAY BE RELATIVELY SMALL – PERHAPS ONLY HUNDREDS OR A FEW THOUSANDS OF DOLLARS ARE AT STAKE.

BUT THOSE DOLLARS TOO OFTEN COME FROM THE HARD-EARNED SAVINGS OF OLDER AMERICANS AND OTHER VULNERABLE TARGETS WHO CAN BE WIPED OUT BY A SINGLE FRAUD. THEY SIMPLY CANNOT AFFORD TO LOSE ONE PENNY TO THESE CROOKS. AND ALL OF THOSE SMALL TRAGEDIES

ADD UP TO ONE BIG OUTRAGE.

SO WE NEED TO GO AFTER THESE CROOKS AND BRING THE FULL FORCE OF THE LAW DOWN ON THEM. BUT AT THE SAME TIME, WE NEED TO BE CAREFUL THAT WE DO NOT DISCREDIT THE LEGITIMATE TELEMARKETING INDUSTRY OR INTERFERE IN THE INFORMED CONSUMER'S RIGHT TO ACCESS TO THE ELECTRONIC MARKETPLACE.

WITH THAT IN MIND, I BELIEVE THAT TODAY'S HEARING WILL ADD IMPORTANT INFORMATION TO OUR UNDERSTANDING OF HOW THESE FRAUDULENT SCHEMES WORK AND WHAT WE NEED TO DO TO STOP THEM AND PUNISH THOSE WHO COMMIT THEM. WITH THAT KNOWLEDGE, WE CAN CAREFULLY CRAFT THE RIGHT LEGISLATION TO DO THE JOB.

THANK YOU, MR. CHAIRMAN.

Mr. SCHUMER. And, second, first let me say to the witnesses this is a terrible problem. I've had people in my own district defrauded by these kinds of, all different kinds of schemes. And, in my judgment, there is a need for Federal legislation because what we found is that most of the telemarketers, of course, go to another State and then finally, when law enforcement—and so the State where the people are defrauded doesn't have jurisdiction over them, and I found a large number in Florida; I don't know why that is. Maybe these telemarketing fraud people like the sunshine.

But there's a need for some Federal law, and your being here is going to help us try to come up with that. It's an issue that I have been interested in for a little while.

The question I guess I have is, other than law enforcement—Ms. Downs, you had mentioned that it took a while for you to figure out what was going on and all of that, and I can't blame you for it—who else was helpful? Obviously, you go to the police, and if you walk into the average police precinct in America, they don't quite know what to do with this kind of issue. It's not the usual thing that they are accustomed to. Did you find along the way any other groups helpful to you?

Ms. DOWNS. I didn't try until the recovery man, that man in Raleigh, and I called the FBI then. None of my requests involved the U.S. mail. They were all credit charges.

Mr. SCHUMER. Right. So you couldn't go to the Postal Service.

How about you, Ms. Ritchey, did you find anything else helpful?

Ms. RITCHEY. I thought the postal inspector's office was extremely helpful, and they would be very aggressive. They gave me a lot of advice in terms of sending letters. This is mail fraud. This is the mail, junk mail, sweepstakes, join our lottery, win a car in the mail. They were very helpful and they sent a lot of forms that, if you cannot stop this being mailed to your father's address, then if you want to report it to us—they were very willing to get involved.

We sent letters to all of the companies that we got mail from indicating that we had—copying the postal inspector's office, copying, notifying, saying that we had notified the State attorney's office, and that they were involved. I mean, we sort of made up this story that there was—big guns were behind us with this little letter saying: don't send any more. It didn't stop anything.

But they were very helpful. Really the Fairfax County Financial Fraud Unit was very helpful. They were knowledgeable. They understood what the problem was, but they could not help because it was out of their jurisdiction.

Mr. SCHUMER. Right.

Ms. RITCHEY. But they were very responsive.

Mr. SCHUMER. They're under the county executive or in the Fairfax Department of Consumer Affairs or—

Ms. RITCHEY. No, it was actually the Fairfax County Police—

Mr. SCHUMER. The police, OK.

Ms. RITCHEY [continuing]. Part of the police.

Mr. SCHUMER. And just one final question that maybe both of you might want to answer: how can we do—how can a better job be done—don't know if it's this Congress that does it—to inform people ahead of time to be more wary of these kinds of things?

Ms. DOWNS. I guess publicity. And I don't know if I would have listened to any, but I guess that's it.

Ms. RITCHEY. I would agree with publicity and communication to the elderly, whether it's through a local church as a support organization, the AARP as an organization—I believe they're actively involved—with communicating, having frequent communication with the population, but the people that I called and said, “I need help,” what would have been very helpful to me would have been this is who you call, period, not: well, you might try this group or you might try someone else. But to have it clearly understood with all of the authorities, whether it's local authority or whether it's Federal Government, that says if the problem is defined as “X,” this is who you call; this is the resource; this is how you get help.

Mr. SCHUMER. Thank you.

Mr. HEINEMAN. Thank you, Mr. Chairman.

In response to Ms. Downs' statement about police groups calling, (a) I'm sure most of us here have gotten calls from telemarketers soliciting money for the local police organizations. Those are telemarketers working for unions who do that to solicit money for the unions. Now you can characterize them any way you want. People used to ask me, as chief of police, “What do I do about this?” I used to tell them, “Nothing”—not that I told them nothing, but I told them not to do anything about it. But we did know who they were.

But in response to Mr. Schumer's question, it would almost seem to me that perhaps the Social Security Administration should get involved with notification with their checks because I think those are the folks—

Ms. DOWNS. Mine's direct deposit.

Mr. HEINEMAN. That's going to be very difficult.

But I want to thank the panel. Your stories have been well taken. I know your frustration in not knowing who to call. We went through hearings Monday in the Banking Committee about these types of scams which affect all of us, whether we're seniors or not yet seniors, and the underlying complaint was: “We didn't know who to go to. Everybody we went to told us we didn't have—they didn't have jurisdiction, and we just didn't know where to go.” And I think that's up to government to fill in those floorboards.

I thank both of you very much for being here today. We do appreciate it.

Ms. DOWNS. Thank you.

Ms. RITCHEY. Thank you very much.

Mr. HEINEMAN. And at this time I'd like to introduce our second panel: Mr. Charles Owens from the Federal Bureau of Investigation and Michael Dembin, U.S. attorney.

On the next panel we have Mr. Charles Owens, Chief of the Financial Crime Section of the Federal Bureau of Investigation. Mr. Owens has national management responsibility for all types of financial crimes investigations, including health care fraud, financial institution fraud, and insurance fraud. He also serves as the national program manager for the White-Collar Crime Program, the FBI's largest investigative program.

Also with us today is Mitchell Dembin, assistant U.S. attorney and Chief of the General Crime Section for the Southern District of California. He is very familiar with telemarketing fraud, since

he was a key coordinator of the telemarketing undercover investigation known as Operation Disconnect.

I appreciate both of these witnesses being here today and look forward to hearing their testimony. And I'd like to congratulate both of the organizations for the tremendous job they did in December, and the months adding up to the December. That was a law enforcement plus.

And I'd like to welcome you here today.

Mr. Owens.

**STATEMENT OF CHARLES L. OWENS, CHIEF, FINANCIAL
CRIMES SECTION, FEDERAL BUREAU OF INVESTIGATION**

Mr. OWENS. Mr. Chairman, I have submitted a statement which I request be made a part of the record.

Mr. HEINEMAN. So moved.

Mr. OWENS. And I have some specific comments I'd like to make, and I believe some of these comments will address some of the issues that arose during the prior panel. Certainly, we're very sympathetic to the plight of some of the victims of this type of crime, and I'm hopeful that as we go through some of the approaches we've taken to deal with this problem in the past couple of years, it will evident that we're trying to take a larger view of the problem and make the maximum impact we can.

The FBI has been very aggressive in recent years in investigating illegal telemarketing operations which have continued to escalate at an alarming rate. While the overwhelming majority of telemarketers are operating legitimate businesses and providing a service to the public, far too many are motivated by greed and have little compassion for citizens who are willing to listen to their pitch and are trusting of them.

Telemarketing fraud is estimated to cost American consumers as much as \$40 billion annually. In my comments this morning I would like to brief the committee on some of the innovative actions the FBI has taken in addressing this problem and briefly identify some of the emerging telemarketing crime problems.

Because of the nature of the telemarketing business and a host of associated problems for law enforcement in pursuing traditional criminal investigations, which again I think are indicated by the prior testimony, the FBI has devised innovative investigative strategies to overcome such problems and obtain the maximum impact.

In Operation Disconnect, the FBI utilized the undercover technique to develop multiple cases against telemarketing operations, essentially using the illegal telemarketer's motivation of greed against them. In Disconnect, we investigated over 140 illegal telemarketing operations, and to date 296 individuals have been convicted, with more expected.

Operation Disconnect was extremely important to the FBI in our efforts to combat illegal telemarketing because it gave us a tremendous insight into how these operations work. It also provided a wealth of intelligence information which we have put to good use. This intelligence information served as the basis upon which we structured Operation Senior Sentinel, which I will discuss in a moment. And, of course, that's the operation you referred to, Mr. Chairman, which went overt in December.

We learned that in the telemarketing operations we investigated the elderly were disproportionately singled out, and we devised a new investigative strategy to focus on this crime problem. I think Mr. Dembin was instrumental in helping devise that strategy, and I'm sure he'll discuss it with you also.

Joining forces with the States' attorneys general, other law enforcement agencies, and with the assistance of the American Association of Retired Persons, and a group of retired FBI agents, a second successful operation, code name Senior Sentinel, was initiated and surfaced in December 1995.

On December 7, nearly 400 individuals were arrested in 41 of the FBI's 56 field divisions throughout the country. To date the cooperating law enforcement agencies have executed 117 search warrants and charged 565 individuals. In total, between Operation Disconnect and Senior Sentinel, 925 indictments have been returned.

I would like to briefly explain the Senior Sentinel scenario. Since we knew that one of the seediest aspects of telemarketing fraud is repeat victimization, we identified repeat victims and, with their cooperation, took control of their phone lines and assumed their names. Trained cooperators of the AARP, retired FBI agents, or in some instances FBI undercover agents became the victim. This scenario proved highly successful and resulted in the development of outstanding evidence which we will be using at trials.

The success of Senior Sentinel was due in part to the establishment of the National Tape Library, funded by the National Association of Attorneys General, which is elaborated on somewhat in my prepared statement. This library is maintained by the FBI with the cooperation of the U.S. attorney's Office in San Diego. It serves as a central repository for thousands of recorded telemarketing pitches, including those made in Senior Sentinel, and is used by law enforcement agencies from around the country. Our effort here is an attempt to have a library of recorded conversations, so we can overcome some of the problems that are indicated, again, by situations where victims maybe don't have particularly good recollection, or maybe there's some question as to whether or not we can prove criminal intent in a court setting.

The National Tape Library allows law enforcement to identify emerging pitches, new companies, and the movement of solicitors from one company to another, which is a point one of you raised in your questioning in the last panel.

We believe the successes achieved in Disconnect and Senior Sentinel, as well as the attention drawn to this problem by Congress, the FTC, the States' attorneys general, consumer advocacy groups, and others, have brought this problem to the attention of the public like never before. We also believe that law enforcement efforts can only go so far to address this problem, and the ultimate solution is in educating the consuming public to enable them to discern the difference between a legitimate telemarketing pitch and a con artist.

While we will continue to investigate cases and bring prosecutions, we will also continue efforts to educate the public through prosecutive actions, media interviews, congressional testimony, and other appropriate means, in an attempt to prevent such crimes before they occur. I believe the public attention brought by Operation

Disconnect and Senior Sentinel, certainly from my standpoint, has brought an awful lot of media attention, congressional interest, and I think the word is getting out there even better. But, as was indicated in the prior testimony, sometimes it's difficult for particularly the elderly in some instances to be willing to recognize that they are, in fact, being victimized.

In assessing emerging issues, we are seeing a substantial telemarketing crime problem operating from Canada, and we are working closely with the Canadian authorities to address this problem. We are also seeing telemarketers employ money-laundering techniques internationally to hide the proceeds of their criminal activity.

Of particular concern is the emergence of investment opportunities offered over the Internet, and we have seen individuals previously involved in other criminal activity traverse into telemarketing. For instance, our Miami office had specific investigations of three individuals who were convicted drug dealers who moved into the telemarketing business.

I would like to publicly recognize the AARP for their outstanding support of our efforts to combat telemarketing fraud and to advise the committee that many Federal, State, and local agencies and interested groups are actively confronting this crime problem together in a cooperative fashion. We can always do more in that arena, and we're attempting to do that, but I think we're probably cooperating to address this problem like no other white-collar crime problem that I'm aware of, but it is a major problem and it's one that's going to be with us for a while, unfortunately.

I'm convinced that we're making progress, but, again, I think more needs to be done. And I think this hearing can be helpful in that regard, and certainly all of our combined efforts working together trying to approach this problem in an innovative fashion we're hopeful will continue to make some substantial impact.

Thank you.

[The prepared statement of Mr. Owens follows:]

PREPARED STATEMENT OF CHARLES L. OWENS, CHIEF, FINANCIAL CRIMES SECTION,
FEDERAL BUREAU OF INVESTIGATION

Good Morning, Mr. Chairman and members of the Committee. Thank you for inviting me to testify as the FBI representative at this very important hearing. As the Chief of the FBI's Financial Crimes Section, it is always an honor to discuss the FBI's role in attacking the crime problems facing our citizens.

Telemarketing has been an accepted way of conducting business since the early 1930s. The telemarketing industry employs over 3.4 million people nationwide and industry estimates place annual consumer spending through telemarketing at over \$500 billion. However, most telemarketers do not generate sales. Many telemarketers perform market research, conduct polls, solicit political contributions and so forth. The FBI fully realizes that the legitimate telemarketing industry contributes to American society. Of great concern to the FBI, this committee, and every American is the scourge of *telemarketing fraud*. The annual cost of telemarketing fraud is estimated to be *\$40 billion per year!* Telemarketing fraud is now one of the FBI's top investigative priorities in our White Collar Crime Program.

Telemarketing fraud has often been mistaken to be a small crime problem. Though individual cases may be small, the cumulative affect of telemarketing fraud can mount quickly. As an example, our Denver office investigated a case predicated upon a \$20,000 loss. The evidence led them to obtain a search warrant on a Las Vegas boiler room. Their investigation uncovered total losses to victims from the state of Colorado of nearly \$1 million dollars and during that same time period, losses to victims around the country approximated \$23 million dollars. This was one, medium sized, Las Vegas room. Some rooms take in \$200,000 in proceeds daily.

Let me briefly share with you some of the FBI's history in telemarketing fraud. The FBI has been involved in the investigation of telemarketing fraud since the enactment of the fraud by wire statute.¹ When it became apparent that traditional investigative techniques were only marginally successful in this area, the FBI pursued a different course. Most notable is "Operation Disconnect" a nation-wide undercover operation which targeted illegal telemarketers in 1992 and 1993.

OPERATION DISCONNECT SCENARIO

Operation Disconnect was developed as an innovative and unique approach to address Salt Lake City's identified telemarketing crime problem. Salt Lake City FBI Special Agents conceived and initiated an undercover operation designed to allow undercover FBI Agents to engage in direct conversations with the owners and operators of identified illegal telemarketing operations. During the conversation, the operators discussed explicitly how they conducted their illegal business. The undercover scenario proved to be so effective that similar undercover operations were initiated in a number of other FBI field offices around the country. At its conclusion, Operation Disconnect encompassed a total of 18 FBI field offices. Operation Disconnect was a national criminal investigative effort unilaterally conducted by the FBI, and was at that time, the most significant investigative initiative undertaken to counter illegal telemarketing operations.

An essential feature of the undercover scenario centered around undercover FBI Agents visiting the owners of illegal telemarketing operations and representing themselves as salesmen of a company which leased a "one-of-a-kind" computerized automatic dialing system. This equipment was advertised by the undercover Agents as a method to dramatically reduce the telemarketer's operating costs and increase their incoming phone calls, thereby generating additional profits for the operation.

The undercover scenario continued with the undercover Agents designing a recorded sales pitch that was customized for that particular telemarketing operation. In order to develop the "pitch," knowledge of the operation was essential. The owners and operators disclosed that they were in the business to defraud people. The recorded sales pitch which was developed after interview with the owners and operators would be installed in the computerized dialing equipment and used to promote the telemarketer's operation. The undercover Agents arranged for a test of this customized recorded sales pitch in order to demonstrate its effectiveness. The test results were quite successful with a number of "consumers" purchasing the product. Based upon the success of the test, the owners of the telemarketing operation were so impressed that they expressed their interest in having the system installed. The telemarketers were unaware, however, that the sales pitch was never reduced to a recording nor was the dialing equipment ever activated. At a prearranged time, other FBI Agents, posing as customers made the "return" phone calls to the telemarketing sales personnel. The lure of quick illegal profits, in this instance, proved to be the undoing of these operations.

The success of Disconnect was based largely upon the use of recorded "pitches" as evidence against the telemarketers. To date, Operation Disconnect has been responsible for the conviction of 296 individuals and the seizure of \$7.6 million in ill gotten assets, of which, \$7.6 has been successfully forfeited. Operation Disconnect brought to the fore, in more vivid terms than ever before, the scope of the crime problem and the unconscionable conduct of these financial felons.

The FBI conducted a thorough review of the cases in Operation Disconnect for its intelligence value. This led to the realization that while the elderly are not the only telemarketing victims; they are the victim group that is impacted most egregiously by this fraud. We noted in Operation Disconnect that approximately 34% of the subject companies targeted the elderly (See Chart 1). Responding to the intelligence gathered in this operation, we undertook efforts to strike as broadly and deeply as possible at those who would victimize our most vulnerable of citizens. In a follow up operation, Senior Sentinel, described more fully in the following pages, 78% of the subjects investigated, targeted the elderly (See Chart 2).

Following Disconnect, we teamed up with States Attorneys General, the American Association of Retired Persons (AARP) and numerous law enforcement agencies nation-wide. The National Association of Attorneys General (NAAG) funded the National Tape Library that allowed law enforcement agencies involved in telemarketing investigations to obtain copies of very valuable evidence. This library, which is maintained by the FBI and funded jointly with the United States Attorneys Office in San Diego and the FTC and State Attorneys General provides real time insight into telemarketing operations.

¹ Note 1: [T18 U.S.C. section 1343] [July 16, 1952 by c. 879, Section 18 (a), 66 Stat. 722].

Immediately after Disconnect was publicly disclosed, telemarketers purchased the customer lists, known as lead lists or more colloquially as "sucker" or "mooch" lists by the telemarketers, from the subject companies and began to run "recovery operations." In the recovery operation pitch, the solicitors identified themselves as FBI agents or other government officials and began to contact the victims known to have been taken in Disconnect and advising that they could obtain some of their lost funds, if they would send in money to cover the costs of taxes, administrative costs or some other fee. Public awareness of Operation Disconnect led us to interact with state, local and other federal agencies on telemarketing fraud matters. This interaction led us to discussions of the problem with government and non government agencies, such as States Attorneys General and the American Association of Retired Persons (AARP).

This interaction developed to the point where we began to conduct joint operations and cooperate in sharing of case related and intelligence information. The AARP offered to locate volunteers who could be used to record conversations with telemarketers. The information and resource sharing produced a team synergy and was the foundation for the future of telemarketing crime activities.

Based upon the very successful use of the recording technique, the information contained in the NTL, and the newly developed cooperative contacts, another national take down was envisioned. FBI agents from across the country attended a seminar in San Diego and were taught the recording technique and the victim venue prosecution theory; and were provided with tapes from their venue. Under the victim venue theory, we endeavor to prosecute the cases where the victims live and not in the venue where the subjects operate. This was a wholesale change in the traditional prosecutive approach and allowed for areas such as Las Vegas, a safety valve and to stem the prosecution to other districts. With the high number of illegal operations in certain venues, an extraordinary burden would have been placed on those venues if all of the prosecutions had been attempted there. This was the genesis of "Senior Sentinel." The participating offices were given time to obtain telephone lines, sufficient numbers of recordings and a coordinated take down date was set. All of this occurred within one year.

Victim lines were identified through complaints made to the FBI or other government agency by the victims or their families. The tragedy of the victim lines, or "mooch lines" to adopt the telemarketer's colloquialism, is that the most productive and effective lines were those that were owned and thus seeded by largest dollar losses to victims. By the time we obtained permission to take over the calls and transfer them the control of an agent or a volunteer, hundreds of thousands of dollars, representing a lifetime of savings flowed through those lines. Once the victims agreed to transfer their old line to our control, they obtained new numbers. We began to make recordings and enjoyed great success. It was not unusual for the telemarketer to refuse to deal with the new volunteer, either by virtue of their being new or the fact that they asked a few questions or didn't quickly send thousands of dollars on a regular basis. It was not long before the calls began to wane in activity, showing the life of the victim lines to be directly correlated to the recent funds received from that line.

The foundation of Senior Sentinel is the recorded conversations, which are housed in the National Tape Library (NTL). The NTL is a central repository of fraudulent telemarketing pitches, consensually recorded by or for law enforcement agencies, nationwide. The NTL contains many thousands of recordings and that number continues to grow daily, through the receipt of tapes that are continuing to be made by law enforcement officials. The tape is catalogued by company name and address, solicitor (or phone name), type of pitch and other pertinent information. When a law enforcement agency wants to obtain information on ABC prize company, a query of the NTL can provide information and recordings on their sales personnel and the sales pitch.

The NTL provides a real-time view of telemarketing actions in America today. It identifies emerging pitches, new companies and the movement of solicitors from one company to another.

The beauty of the NTL is not only in its enforcement effectiveness, but that its cost and information is shared through a cooperative law enforcement effort. It is the backbone of an effective strategy to focus on telemarketing crime.

The NTL includes many recordings made through our Senior Sentinel initiative. The AARP located volunteers through their volunteer data base and provided volunteers throughout the country. The Society of Former FBI agents volunteered their services and located retired FBI agents to take phone calls. This small army of volunteers manned the recorders, which freed the investigators from the phone lines to conduct more substantive investigative tasks.

Since its inception with the cooperation of agencies on the Federal, state and local level, Senior Sentinel has resulted in 117 search warrants being executed and 565 individuals charged including the arrest of approximately 400 people on 12/7/95.

The recorders of Senior Sentinel are still rolling and recordings of fraudulent pitches are continuing. Two individuals who were arrested in Buffalo as a result of Senior Sentinel were released, recorded again, charged again and arrested again. One was declared a public nuisance, denied bond and remains in jail. Due to the notoriety of Senior Sentinel and the utilization of the NTL, we have observed that use of the prize pitch, which accounted for almost half of the Senior Sentinel cases is now decreasing; but the same lists of victims are being besieged with high dollar investment scams that will just as quickly dissolve their life savings.

We know these telemarketers are fully cognizant of the illegality of their activities. This was noted by the actions of some on the day of take down, where telemarketers were calling FBI offices or showing up at the Las Vegas armory, which acted as a temporary court house, to turn themselves in. Although their admission and surrender was greatly appreciated, they had not been charged in the takedown.

We are continually identifying new operations and other schemes and I'd like to focus on some of the investigative challenges that we face today.

In Senior Sentinel, we have identified many different schemes, but categorized them into five broad areas. Prize rooms that offer one of four or five valuable prizes; Product rooms that offer a product (lottery tickets, gems, jobs); Charity rooms which claim to be calling to aid some worthy cause—the cause ultimately receives either nothing or a token donation; Recovery Rooms, who claim that for a fee they can return all or a portion of the funds lost to a telemarketer (and often identify themselves as law enforcement) and Rip and Tear operations, which purport to be operating one of the above four "services," but in fact operate from a hotel room, using false names and mail drops and is set up to vanish immediately, after receipt of a victim's money.

Of the operations, the Rip and Tear is the most difficult to investigate, because they are set up to vanish in a short time without a trace. They usually collect cash or use a check cashing service. Identifying and locating the perpetrator is very labor intensive. Since the mod us operandi of Rip and Tear operators is to "Grab and Go," they make the most outrageous statements and promises and inflict great damage in a short time. When they are caught, they are usually punished on the scope of the one Rip and Tear for which they were arrested and no records exist of the true depth of their operation. The tape that was prominently played in the national media at the time of the Senior Sentinel take down, where the victim was verbally abused by the telemarketer is an example of a Rip and Tear artist. We have identified this individual and that he was located in a Las Vegas jail, held on other fraud charges brought by the FBI.

Currently, we are seeing a number of telemarketing operations that are involved in cross-border frauds and use sophisticated money laundering techniques. We have teamed up with our Canadian law enforcement counterparts to attack the Canadian boiler rooms. While law enforcement is aggressively investigating Canadian boiler rooms, prosecutive issues that are currently under review in Canada limit their efforts to effectively prosecute boiler rooms operating in Canada. As these operators target United States citizens for cross-border financial frauds, we are conducting victim venue investigations. Canada is a new and emerging battle front and while we are making great progress, each day that the telemarketers operate, the costs to American victims rise.

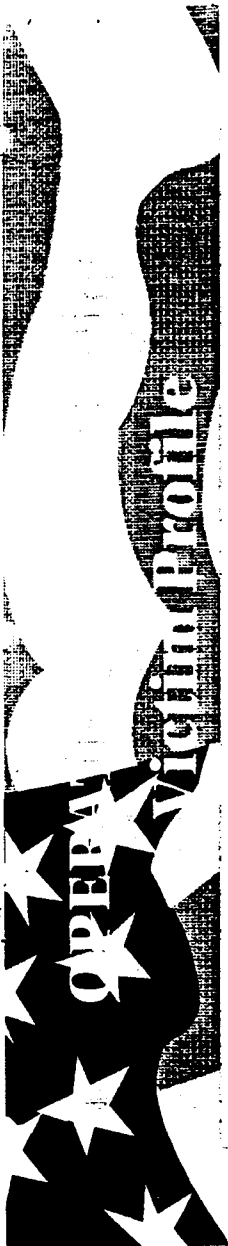
We are seeing drug dealers in South Florida, give up the risks associated with the drug trade for the "easy money" as they put it in telemarketing fraud. We are seeing connections to Organized Crime; the La Cosa Nostra (LCN) and Motorcycle Gangs. Investment offers through the internet have been noted, opening a new arena for fraud victims. Based on our intelligence information, telemarketing is a large and growing crime problem area although we are hopeful recent efforts will begin to turn the tides. We continue to identify new and innovative approaches to the problems and we are taking investigative actions to develop cases that will cost effectively and systematically cut off any new approaches or avenues used by telemarketers.

After Disconnect, hearings such as this were held before the Consumer Subcommittee of the Senate Committee on Commerce, Science and technology, which led to the criminal telemarketing legislation in Title 18 Sections 2325 to 2327 which effectively enhanced criminal penalties for telemarketers who target citizens over 55 years of age. We are seeing the fruits of this enhancement. Based upon enhancements in the referenced statutes, two telemarketers from Chattanooga, Tennessee, one from Buffalo and one from Las Vegas have recently received ten year sentences for their crimes and we thank Congress for arming us with this effective legislation.

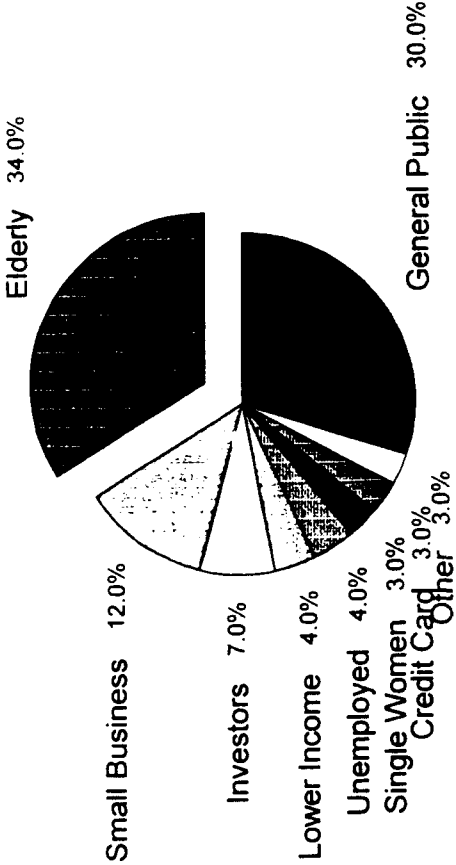
In closing, I'd like to point out that telemarketing fraud is not a new crime to law enforcement; but never before has it been used so prolifically to target our elderly citizens. The FBI's analysis of this crime problem revealed, tragically, the illegal telemarketers continue to prey in large measure on older Americans—those who may be least able to recover from losses. A telemarketer in Las Vegas can use an alias, call an apartment in New York and make the next call to a farm in Kansas. No community, urban or rural, wealthy or poor is immune from this crime. It is therefore imperative that we aggressively pursue telemarketing investigations and we will be ever vigilant in our efforts to identify perpetrators and protect our citizens from these financial predators.

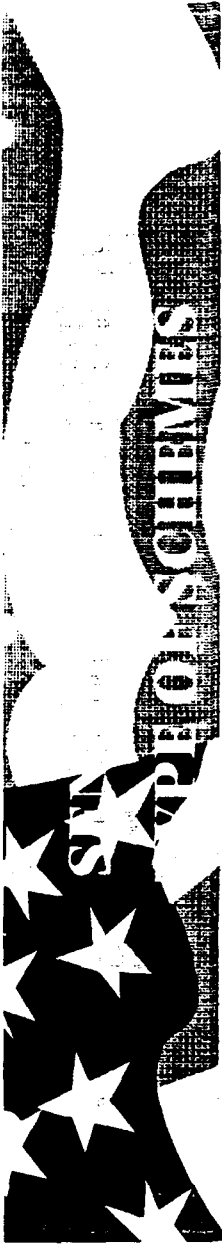
The FBI has a long history of aggressively and successfully battling frauds and we will continue to wage our war on telemarketing crime. The Senior Sentinel records continue to roll and new cases are being developed. The FBI believes that this unique operation has the potential of making a major impact on illegal telemarketers who will never know whether they are pitching a person known to easily fall victim to their lurid lines, or an undercover agent or cooperating private citizen who is gathering evidence for later use in a court of law.

Mr. Chairman, thank you for the opportunity to present this opening statement and for holding these hearings which cover these important issues.

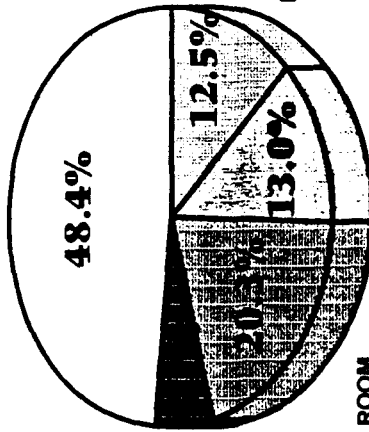


VICTIM PROFILE





PRIZE ROOM



PRODUCTS

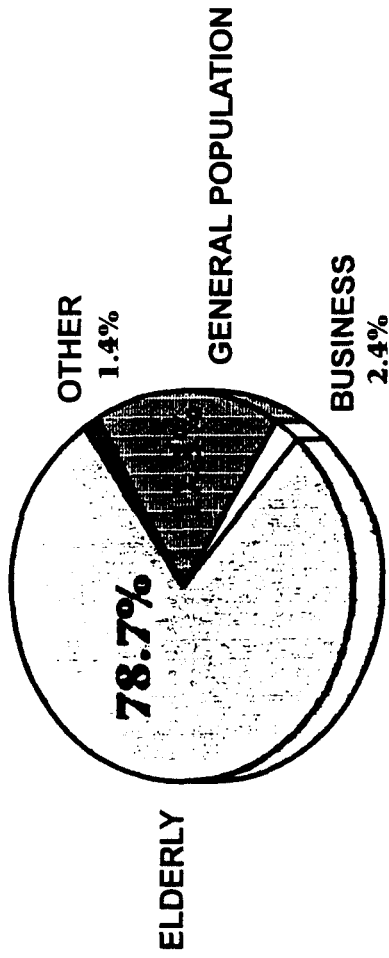
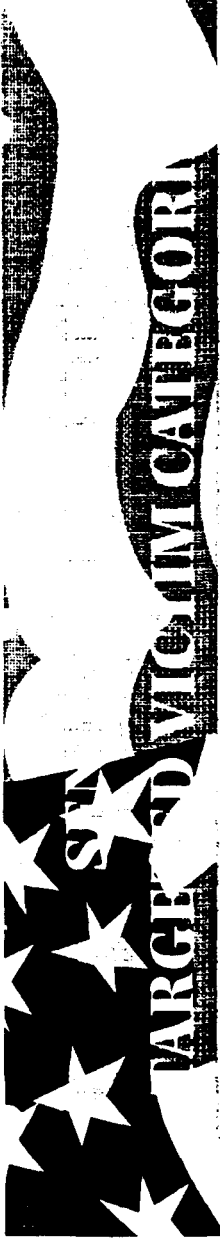
CHARITY ROOM

RECOVERY ROOM

RIP & TEAR

ANALYSIS OF 141 CASES

- ☐ Rip & Tear No valid product, prize, investment or service is provided to the victims. Usually a temporary operation utilizing mail drops and hotel rooms or phone booths.
- ☐ Recovery Room The victim is told the room can recover their money or prizes from other Telemarketing schemes for a fee.





Search/Arrest Locations

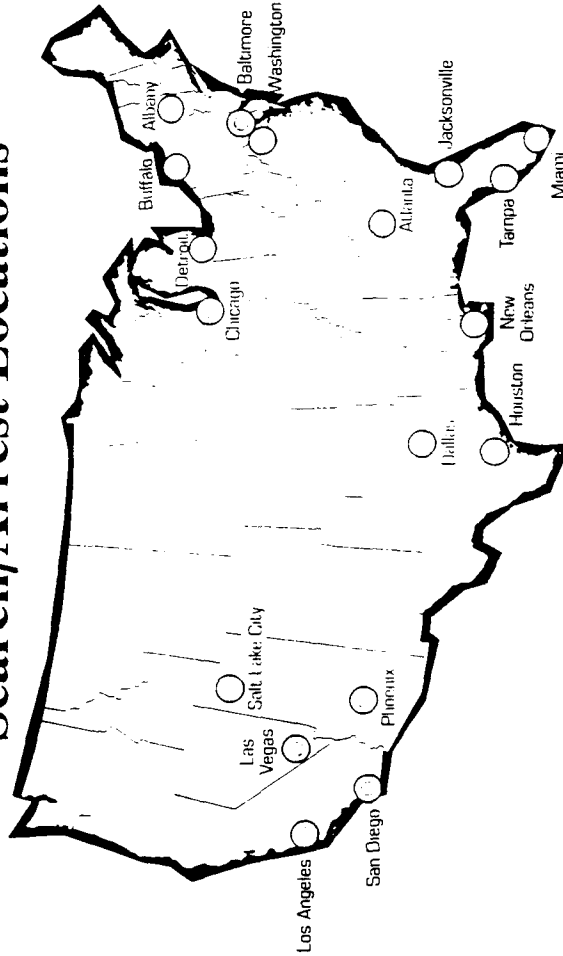


CHART 4

Senior



Sentinel

PARTICIPATING FIELD OFFICES

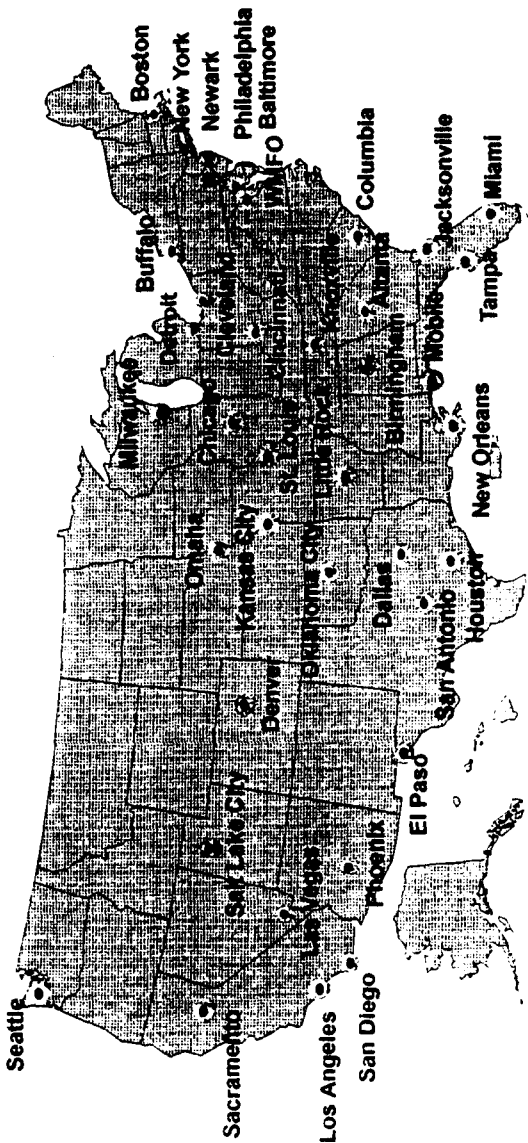


CHART 5

7/07/95

Mr. HEINEMAN. Thank you, Mr. Owens.
Mr. Dembin.

**STATEMENT OF MITCHELL D. DEMBIN, CHIEF, GENERAL
CRIMES SECTION, U.S. ATTORNEY'S OFFICE, SOUTHERN DIS-
TRICT OF CALIFORNIA**

Mr. DEMBIN. Thank you. Mr. Chairman, members of the subcommittee, my name is Mitchell Dembin. I am the Chief of the General Crimes Section of the U.S. Attorney's Office for the Southern District of California, as well as the legal coordinator emeritus for San Diego's Boiler Room Task Force. Thank you for the opportunity to appear before you today to discuss the problem of telemarketing fraud.

My involvement in combating illegal telemarketing dates back to 1991, when, as legal coordinator for San Diego's Boiler Room Task Force, I participated in the planning stages for what became Operation Disconnect. At that time San Diego had become one of the top five host cities for illegal telemarketing, and fraudulent telemarketing businesses were flourishing in cities across the United States.

I coordinated U.S. attorneys' offices across the country and worked closely with the FBI in what was recognized to be one of the most successful white collar undercover operations in history, Operation Disconnect. In March 1993, almost 300 telemarketers were arrested across the country, 110 of whom were prosecuted in San Diego by me and by prosecutors under my supervision.

Operation Disconnect gave law enforcement an insider's understanding of how fraudulent telemarketing businesses operate. The intense law enforcement effort in San Diego caused virtually every telemarketing business to leave San Diego. We learned that fraudulent telemarketers who left San Diego simply opened for business in other areas. San Diego's task force knew that we could not rest on the success of Operation Disconnect and that an innovative new approach would be required to prosecute fraudulent telemarketers regardless of where they opened shop.

FBI agents from San Diego's task force and I took the victim venue concept, which has been used successfully in some jurisdictions, and developed a pilot program in which senior citizen volunteers would take record conversations on telephone lines that had been forwarded from actual victims.

I conducted the first training for volunteers from the American Association of Retired Persons. After we learned how successful this technique was, we shared the investigative technique with FBI divisions across the United States and created a National Tape Library in San Diego to maintain and index all the tape-recorded evidence which were generated by the divisions and by State and local law enforcement agencies nationwide. The result was the Senior Sentinel initiative.

Last December, 400 telemarketers were arrested and charged in Federal, State, and local districts for fraudulent telemarketing, and over 6,000 tapes are in the tape library, with more arriving every day to form the basis for future prosecutions.

In my work in prosecuting fraudulent telemarketers, I have interviewed more than 40 fraudulent telemarketers and countless

elderly victims. It is clear that fraudulent telemarketing operations display an ugly underbelly of society.

The tragedy of telemarketing fraud is that its perpetrators often target elderly victims who have contributed much to our society. Who are they? They are veterans of World War II and Korea. They are retired school teachers. They're our parents. They're our grandparents. Many of the victims come from a time and place where one's word was his bond, and they are an easy prey to a con artist who will say whatever it takes to separate victims from their money.

Who are the people who have been prosecuted for victimizing our Nation's elderly? They are white collar thugs who contribute nothing to society. They choose to satisfy their greed by bilking others instead of doing an honest day's work. They strip victims not only of their hard-earned money, but also of their dignity. They are swindlers who con our senior citizens out of their life savings by playing on trust, sympathy, and sometimes loneliness.

"I would rather be taken advantage of by someone who placed a gun in my ribs than be cheated by someone I trusted," wrote an elderly victim recently. Fraudulent telemarketers not only rob their victims of their hard-earned financial assets, but also of their human dignity. Victims are derisively referred to by their swindler as "mooches."

Many older Americans are exploited at a time when they are particularly vulnerable. They are mentally infirm and frequently lonely. An alarming number are suffering from debilitating grief over the loss of a lifetime spouse at the precise time they are tapped by a telemarketer.

Some telemarketers use abuse and extortion, if nothing else works. For example, in one tape recording made by an undercover FBI agent in San Diego the telemarketer threatened to bring a legal action against the victim and take his home as part of a legal judgment, if the victim did not send the money that he was obligated to send to the telemarketer.

Telemarketers have said that they don't fear prosecution because they count on their victims' physical or mental infirmity, perhaps even impending death, or the shame surrounding victimization, to prevent their testimony at trial. Often these elders get trapped in a downward spiral of repeated victimization as they grow increasingly desperate to recoup their losses.

Their adult children contact our office and fear that their parents are no longer financially able to support themselves, and the elderly victims implore us not to reveal the full extent of their losses, fearing that their last measure of independence will be taken away from them by their well-meaning children.

Fraudulent telemarketers would want you to believe that they are no different from reputable companies, like L.L. Bean or J.C. Penney. They cloak themselves in a veneer of legitimacy, sometimes seeking membership in Better Business Bureaus, paying payroll taxes, and registering their businesses with the attorney general's office in their States.

Originally, telemarketing just meant selling a product or service by telephone, a perfectly legitimate activity. As more and more crooks use telemarketing as a criminal device, the term has come

to connote telephone fraud involving high-pressure sales techniques and phony promises of valuable awards.

Typical schemes prize or product schemes, whereby the telemarketer promises thousands of dollars, free vacations, or new vehicles in order to induce a victim to buy overpriced vitamins or key chains. Bogus charities that play on sympathy and offer phony awards for large donations have been very successful lately. If a victim receives anything at all in return for the money sent to a telemarketer, the items are generally worthy far less than represented; in some cases, they are no more than worthless junk.

A particularly ruthless form of telemarketing is the recovery room operator who falsely promises to recover for victims money they have already lost to telemarketers—for a substantial upfront fee, of course. Telemarketers' sales presentations are designed to trap the unwary, the close a sale by whatever means necessary. Telemarketers get paid generous commissions, living by the proposition that whatever brings profits is permissible. The lifeblood of these swindlers are lead lists of people who have been defrauded in the past and are known to be particularly vulnerable.

An experienced salesperson can make \$50,000 to \$90,000 a year, and an aggressive telemarketer can make over \$450,000 in a given year. Yet often when these con artists are brought to justice, it is impossible to recover anything to compensate their victims because most of their money has gone to purchase illegal drugs or to support an extravagant lifestyle.

Another pervasive telemarketing scam is commonly referred to as a "rip-and-tear." In such a scheme, the telemarketer makes calls from a motel room, apartment, or phone booth and induces a victim to send money, generally through a wire service, to a mail drop by promising the victim that he or she will receive a large prize. The telemarketer disappears after receiving the victim's money, and the telemarketer moves on to another location using another name.

In handling numerous telemarketing frauds, we have found that telemarketers do not defraud victims in their State. Instead criminals use their State of operation as a base to victimize citizens of other States. Telemarketers have relied upon jurisdictional barriers between States as well as geographical distance to avoid prosecution. Certainly if the victims were located in the same State as the boiler rooms, prosecution would be much easier.

Because of the multistate nature of the crime, telemarketing fraud is a nationwide problem requiring the commitment of State and Federal law enforcement. Many States have formed telemarketing task forces consisting of investigators from the FBI, the IRS, the Secret Service, the Postal Inspection Service, and the State attorney general's office, frequently using our San Diego Boiler Room Task Force as a model for a successful and effective task force.

In such task forces, State investigators and attorneys work side by side with Federal agents and prosecutors in a cooperative effort to combine resources in pursuit of these criminals. Through this combined effort, hundreds of telemarketing criminals have been prosecuted and convicted in San Diego and 400 defendants are currently under indictment and pending trial in districts across the United States.

Operation Senior Sentinel built on the unprecedented cooperation between State and local law enforcement on a national basis that had developed in the course of Operation Disconnect. The success of Senior Sentinel illustrates Attorney General Janet Reno's philosophy that effectively addressing a widespread national problem requires that State, local, and Federal authorities work together to find solutions and to share resources and expertise.

Senior Sentinel's success was derived from the use of AARP volunteers and law enforcement personnel to take over the phone lines of elderly victims who had been repeatedly defrauded and to tape record calls from telemarketers. The tape-recorded pitches, which were replete with fraudulent misrepresentations, became the basis for Senior Sentinel's criminal indictments and search warrants.

The Federal sentencing guidelines have been instrumental in guaranteeing lengthy prison sentences where defendants' conduct is aggravated by large losses, false testimony, or the commission of further criminal activity while on release. However, it should be noted that, because the guidelines are largely based upon the loss generated by the defendants, law enforcement efforts that promptly discover and terminate fraudulent telemarketing ventures before the operation has a chance to generate huge losses result in lower sentences that would be obtained had law enforcement waited until more people were victimized.

Additionally, many Federal judges have applied the Bail Reform Act to prohibit telemarketers from engaging in any form of telemarketing while pending trial. All convicted telemarketers are prohibited from engaging in any form of telemarketing during their period of supervised release or during probation. These prohibitions prevent telemarketers from returning to fraudulent activity following their indictment or conviction. Those that do are subject to violation of conditions of release and enhanced penalties. Most important, the more telemarketers who are convicted, the less elderly victims are being swindled.

Following the press coverage of Senior Sentinel, many scam artists switched from the traditional price-and-promotion schemes to a new, less publicized fraudulent scheme such as investment in wireless cable, gemstones, ostrich farms—my personal favorite—and film production. Fewer calls are now being made by prize promotion, charity, and recovery boiler rooms.

Telemarketing fraud, like other criminal activity, cannot be completely eradicated. So long as there are criminals intent on making an easy buck there will be scams. Vigilant law enforcement is necessary to respond to telemarketing fraud, to punish those who perpetrate it, and to deter others from entering the arena.

The importance of State and local involvement in attacking telemarketing fraud cannot be overemphasized. An important tool is the initiation of victim venue cases; that is, prosecuting telemarketers where the victim, rather than the boiler room, is located. In such prosecutions, telemarketers are forced to travel to other States to face their victims. There is great trepidation on the part of these scam artists to be tried in the victims' forum, often rural, where there is no tolerance for telemarketers. Allowing the victim

to testify locally reduces the stress of the criminal justice experience.

Federal agents have shown me posted notices recovered from boiler rooms instructing their con men not to solicit in certain so-called "bad States," such as New Mexico or Iowa. The telemarketers understand that the States listed on these "don't call" boards will aggressively prosecute them, even in rural locations. Aggressive prosecution of victim venue cases provides a major deterrent that State and local government can use to keep scam artists from calling into their jurisdictions.

One thing we can all do is to warn our aging parents and friends, especially those living out of State and away from the protective eye of family, to be alert to these parasites who exploit loneliness and trust.

This concludes my prepared remarks. I would be happy to address any questions you have. Thank you for the opportunity.

[The prepared statement of Mr. Dembin follows:]

PREPARED STATEMENT OF MITCHELL D. DEMBIN, CHIEF, GENERAL CRIMES SECTION,
U.S. ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF CALIFORNIA

Mr. Chairman and Members of the Subcommittee: My name is Mitchell Dembin, and I am the Chief of the General Crimes Section of the United States Attorney's Office for the Southern District of California, as well as the Legal Coordinator Emeritus for San Diego's Boiler Room Task Force. Thank you for the opportunity to appear before you today to discuss the problem of telemarketing fraud.

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Thus, FBI agents from San Diego's Task Force and I took the "victim venue" concept, which had been used successfully in some jurisdictions, and developed a pilot program in which senior citizen volunteers would tape-record conversations on telephone lines that had been forwarded from actual victims. I conducted the first training for our volunteers from the American Association of Retired People (AARP). After we learned how successful this technique was, we shared the investigative technique with FBI divisions across the United States, and created a National Tape Library in San Diego to maintain and index all the tape-recorded evidence which were generated by the divisions and by state and local law enforcement agencies nationwide. The result was the Senior Sentinel Initiative. Last December, four hundred telemarketers were arrested and charged in federal, state and local districts with fraudulent telemarketing, and over six thousand tapes are in the Tape Library, with more arriving every day, to form the basis for future prosecutions.

In my work in prosecuting fraudulent telemarketers, I have interviewed more than forty fraudulent telemarketers and countless elderly victims. It is clear that fraudulent telemarketing operations display an ugly underbelly of society. The tragedy of telemarketing fraud is that its perpetrators often target elderly victims who have contributed so much to our society. Who are the victims? They are our veterans of World War II and Korea. They are our retired school teachers. They are our parents and grandparents. Many of the victims come from a time and place where

one's word was his bond, and they are easy prey to a con artist who will say whatever it takes to separate victims from their money. Who are the people who have been prosecuted for victimizing our nation's elderly? They are white collar thugs who contribute nothing to our society. They choose to satisfy their greed by bilking others instead of doing an honest day's work. They strip victims not only of their hard earned money, but also of their dignity. They are swindlers who con our senior citizens out of their life savings by playing on trust, sympathy, and sometimes loneliness. "I would rather be taken advantage of by someone who placed a gun in my ribs than be cheated by someone I trusted," wrote an elderly victim recently.

Fraudulent telemarketers not only rob their victims of their hard-earned financial assets, but also of their human dignity. Victims are derisively referred to by their swindlers as "mooches." Many older Americans are exploited at a time when they are particularly vulnerable. They are often mentally infirm and frequently lonely. An alarming number are suffering from debilitating grief over the loss of a lifetime spouse at the precise time they are tapped by a telemarketer. Some telemarketers use abuse and extortion if nothing else works. For example, in one tape recording made by an undercover FBI agent in San Diego, the telemarketer threatened to bring a legal action against the victim and take his home as part of a legal judgment if the victim did not send the money that he was "obligated" to send to the telemarketer.

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One thing we can all do is to warn our aging parents and friends, especially those living out of state and away from the protective eye of family, to be alert to these parasites who exploit loneliness and trust.

This concludes my prepared remarks, and I will be happy to try to address any questions you may have. Thank you for the opportunity to be here today.

Mr. HEINEMAN. Thank you, Mr. Dembin.

Could either of you tell me if we have an extradition treaty, so to speak, with Canada on these issues?

Mr. DEMBIN. Yes, we do, as long as fraud is involved.

Mr. HEINEMAN. OK.

Mr. SCOTT. What was involved?

Mr. DEMBIN. Fraud.

Mr. HEINEMAN. Mr. Owens, we had a hearing last Monday in Banking Committee about fraud, credit card fraud and every type of fraud you can think of, and it was scary, scary to those of us that were there listening to it and the sophistication that goes into finding out everything about the victim.

Would the FBI—and what came up during that from one of the victims from Madison, Wisconsin was the fact that, when she did call the FBI, they said they had a \$50,000 floor before they would get involved in those types of frauds. Is that true?

Mr. OWENS. It depends on the particular Federal judicial district. We're working under our 94, I think, Federal judicial districts; there are 56 FBI field offices. Some cover several districts. Each district has attempted to set thresholds based on the volume of their cases. Obviously, there are only so many cases they can push through the court system at a time. So their theory is generally they try to work the most egregious cases and they set thresholds based on that.

That's a very difficult situation. Certainly we would prefer to work all the cases. As was indicated in the last panel, these are crimes and they should be prosecuted, and they absolutely should. Unfortunately, we're dealing with volume of crime in the white-collar crime arena. That makes it very difficult. That's why I referred to having to go away from some of the traditional investigative techniques, that being a victim calls up and you investigate that complaint and attempt to prosecute it.

Mr. HEINEMAN. Yes, I can understand that, but what does a victim do, a victim who falls below the floor? Who does the investigation?

Mr. OWENS. Well, this is why we attempt to cooperate with the State agencies and the various Federal agencies. This is—I think in virtually every instance it's going to be a violation of a local law as well as a Federal law. So there is a local option for these things. There are also civil options which are not easy; they're very difficult, very expensive for victims. This is all part of the problem we're attempting to confront, and we're attempting to maximize our efforts, but it is difficult.

Mr. HEINEMAN. I know on a kidnapping that you folks in the past have not gotten involved until three days, assuming that the victim crossed the State line at that point. I don't know whether you've changed that at all, but it would appear that these boiler rooms and these scam artists, although they may take \$50,000 from one person, are more likely to take \$1,000 from 50 people. And it would be assumed that this they do for a living, and for every one they get caught, that they got away with 50 or 100. And I certainly would like to see some type of change in policy that would address every one of those.

And knowing full well how fully employed the FBI is, and certainly we're going to pass, I hope, a terrorism bill today, you're going to be even more fully employed. But it's very frustrating for the victims to be told, well, you didn't lose enough. And for the local law enforcement, local law enforcement can investigate the chimney flue scam or the roofing scam in their areas, in their jurisdiction, but it's frustrating for everybody, and I would like to think that some accommodation could be made to deal with the—and referral to deal with these victims of scams.

Mr. Dembin, I'm very interested in that library you have in California, to know exactly what the contents are. It would be very advantageous to those of us in local areas all around where there are many seniors, and in Florida the seniors follow the sun, and the scam artists follow the seniors. So, of course, there are certain States which have a greater need for this where we could receive copies of tapes, such as in your Operation Senior Sentinel. I mean, I sat and listened to that on television, and I was very impressed with what I heard.

I think in the vein of prevention, where senior centers are concerned, where senior residents are concerned, if we'd be proactive and play those tapes for those people, so they would know that it's a scam before they end up getting hooked up in it. Are those tapes—do those tapes address those actual conversations perhaps that you may have had in a senior center where we could retrieve a tape or two tapes, and not to keep it, but to buy a copy and play them at these senior centers?

Mr. DEMBIN. We'd probably supply a copy to you gratis. The tapes are created—

Mr. HEINEMAN. I'll give you my card. [Laughter.]

Mr. DEMBIN. The tapes are created by volunteers and by undercover agents across the United States, both in State attorney generals' offices and in Federal offices. The tape library project sort of came about by accident. It was following the publicity of Operation Disconnect; I was sent around the country sort of as the poster boy on fraudulent telemarketing and giving presentations to a number of different organizations, and I was fortunate enough to be able to speak with the members of the National Association of Attorneys General.

I found out that the State of Iowa had been tape recording conversations using takeover lines from actual victims, and they were complaining that nobody knew that they had it and they were sure that other people were doing it, and they wished there was a way that these tapes could be centrally located somewhere where anyone in any form of law enforcement could get a copy. That was the genesis of the tape library project.

It includes tapes not only from Senior Sentinel, but also from Operation Disconnect. As I said, there are tapes arriving every day, and they fill the bill from very good telemarketing pitches, which you have to listen to very carefully to find the misrepresentation, to those that are just blatant rip-and-tears.

To the extent that any Member of Congress would want a copy of any particular tape, it's easily accessible by calling the San Diego Boiler Room Task Force.

Mr. HEINEMAN. Thank you very much. I see my time has expired.

Mr. Schumer, the ranking member.

Mr. SCHUMER. Thank you, and I thank both of you for your excellent testimony and, more important, your work.

Mr. Owens, you had talked about \$40 billion in fraud. Is that a conservative estimate? I mean, how do you come up with that number?

Mr. OWENS. That figure, I believe, is attributable to the National Consumers League or, I guess, the National Telemarketing Association, which estimates 10 percent of the business conducted by the telemarketing industry, which I'm now told is up from approximately \$400 billion to \$500 billion—so, arguably, if the—

Mr. SCHUMER. It could be higher?

Mr. OWENS. It could be higher.

Mr. SCHUMER. Could you—and this may be not in your jurisdiction, but could you give us a comparable number—how much do we lose to bank robbery a year?

Mr. OWENS. I'm sure it's substantially lower in bank robbery. But, for instance, in health care, it's about \$100 billion.

Mr. SCHUMER. OK.

Mr. OWENS. So that's certainly a high-priority area now. But probably beyond that, this would rank right up there as one of the highest areas.

Mr. SCHUMER. Right after health care fraud? It's amazing.

Mr. OWENS. And the number of victims certainly; as the chairman indicated, small amounts.

Mr. SCHUMER. And that's my second question. You know, you talk about the bigger, more major operations versus these rip-and-tear operations, where they keep going on the run. Do we have an idea—is more of the money lost to the big operations or to the little ones?

Mr. OWENS. I would say probably the little ones, although some of the individual amounts can be very substantial, but I would venture to say it's the small ones.

Mr. SCHUMER. When you catch the big ones, do you manage to get lists? I think Mr. Dembin mentioned that they—maybe you did; I can't remember—that they go back after the same people because they find them prey, ripe prey, for their fraudulent activities. That means they must keep lists.

Mr. DEMBIN. Yes, they do.

Mr. OWENS. Absolutely.

Mr. SCHUMER. So are you able to write or call each person, even if they can't get reimbursed, if you find no money available, to warn them not to do it again? I think that we heard testimony that said the same people are susceptible over and over again, which surprised me. You'd think once you get ripped off once, you'd be very dubious of what anyone tells you on the telephone, but obviously that's not the case.

So is there a way to warn the people who have already been ripped off once when you get their names? Do you have a policy of doing that? Would it be hard to institute one?

Mr. DEMBIN. We use the media generally to publicize the names of the companies that we have prosecuted. In order to contact each victim—just, for example, the seven largest companies in San Diego, which we raided in 1993, we took probably 150,000 names.

Mr. SCHUMER. That was across America?

Mr. DEMBIN. That's across America, and that's just high-profile customers.

Mr. SCHUMER. Right.

Mr. DEMBIN. The lists of people that they have is amazing.

Mr. SCHUMER. Because maybe it would pay—I mean, I know this is a small expense, but—I mean an expense—but to write each person a letter and say, “Hey, you’ve been victimized once. Do not—don’t do this stuff on the telephone unless you call back, check it out, et cetera.” I don’t know.

Mr. DEMBIN. The interesting part of that is that that same type of letter is often used by the recovery rooms——

Mr. SCHUMER. Yes, I know. [Laughter.]

Mr. DEMBIN [continuing]. In order to get advance fees.

Mr. OWENS. Many times these people still don’t believe they’ve been victimized. We had an instance where one of our cooperators actually was victimized while they were cooperating with us. [Laughter.]

It’s very difficult.

Mr. SCHUMER. Goodness. Well, it’s a serious problem.

Have you had—what do you think of the legislation that—what’s the number?—1499, do you support that?

Mr. OWENS. We’ve reviewed it and we’re discussing it with the Department of Justice. I don’t think the Department has fully evaluated it yet, but certainly——

Mr. SCHUMER. You’ll get an answer back to us on that?

Mr. OWENS. Yes.

Mr. SCHUMER. Thank you.

[The information follows:]



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 25, 1995

The Honorable Bill McCollum
Chairman
Subcommittee on Crime
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter to the Attorney General, dated May 19, 1995, in which you requested written comments on H.R. 1499, the Consumer Fraud Prevention Act of 1995. Because of its commitment to the aggressive pursuit of telemarketing fraud and other forms of fraud directed at vulnerable victims, the Department of Justice appreciates the opportunity to comment on this important proposal.

Section 2(a) of the bill would amend the general civil forfeiture provisions contained in 18 U.S.C. § 981(a)(1), by including a new subparagraph to make forfeitable any real or personal property "constituting, derived from, or traceable to, any proceeds obtained directly or indirectly to [sic] a violation of section 2326 [of title 18]." Two observations on this subsection are in order. First, the Department views 18 U.S.C. § 2326 as a sentencing enhancement in certain telemarketing fraud cases brought under 18 U.S.C. §§ 1028, 1029, 1341, 1342, 1343, and 1344, rather than as a new criminal offense. Since the government has the option of seeking or not seeking such a sentencing enhancement, depending on the facts of a particular case, the proposed language quoted above would limit the ambit of the proposed section 981(a)(1)(G) to cases in which the enhancement would be sought, even though civil forfeiture might be entirely appropriate in many other telemarketing fraud cases. Accordingly, the Department suggests that the pertinent language of the proposed subparagraph (G) be revised to state "any proceeds obtained directly or indirectly from a violation of section 1028, 1029, 1341, 1342, 1343, or 1344 relating to telemarketing (as that term is defined in section 2325 of this title)."

Second, the provisions of the proposed subsection 2(a) would also authorize the use of property forfeited under the proposed section 981(a)(1)(G) "for the national information hotline established under section 250008 of the Violent Crime Control and

Law Enforcement Act and other enforcement of section 2326." The Department respectfully suggests that this provision is unnecessary for several reasons. As the proposal indicates, section 250008 of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA), 108 Stat. 2088 (1994), authorized the Department, subject to the availability of appropriations, to establish a national toll-free hotline for providing general information on telemarketing fraud and gathering information related to possible violations of title XXV of the VCCLEA. For some time, the Federal Trade Commission and the National Association of Attorneys General, with the cooperation of the National Consumers League, have successfully been operating the Telemarketing Complaint System (TCS), a national database for telemarketing fraud complaints. The TCS, in turn, relies heavily on complaints received through the national toll-free hotline maintained by the League's National Fraud Information Center.

The Department of Justice, the Federal Bureau of Investigation, the Postal Inspection Service, and other investigative and regulatory agencies have access to the TCS, and have found it extremely helpful for investigative leads and strategic intelligence for telemarketing fraud investigations. The Department of Justice has therefore relied on the TCS and the National Consumers League's hotline, rather than expend additional funds to establish a competing hotline and database, which is likely to create confusion among telemarketing fraud victims about which number they should call with complaints. Moreover, the Department believes that the current funding levels for federal prosecutors and agents to pursue allegations of telemarketing fraud are adequate, and therefore would oppose the use of forfeiture provisions to fund telemarketing fraud enforcement efforts.

In one area of telemarketing fraud, the Department does intend to seek additional funding directly through the appropriations process. Pursuant to section 250005(3) of the VCCLEA, the Department is seeking an additional appropriation of \$500,000 for Fiscal Year 1996, for the Department to conduct public awareness and prevention initiatives for senior citizens, such as seminars and training. Accordingly, the Department respectfully recommends that the second sentence of the proposed section 981(a)(1)(G) be deleted.

Section 2(b) of the bill would establish counterpart language in 18 U.S.C. § 982(a) for criminal forfeiture. Under this provision, a court, "in sentencing an offender under section 2326," shall order that the offender forfeit "any real or personal property "constituting or derived from proceeds that the offender obtained directly or indirectly as a result of the offense." For the reasons stated above concerning section 2(a), the Department recommends that this language be revised to state the following: "The Court, in sentencing an offender under

section 1028, 1029, 1341, 1342, 1343, or 1344, where the offense of conviction involved telemarketing (as that term is defined in section 2325), shall order that the offender forfeit to the United States any real or personal property constituting, derived from, or traceable to, any proceeds that the offender obtained directly or indirectly as a result of the offense." Similarly, for the reasons stated in the preceding paragraphs, the Department respectfully recommends that the second sentence of the proposed section 982(a)(6) be deleted.

Section 3 of the bill would amend section 2327(a) of title 18 by giving priority to payment of amounts due pursuant to restitution under section 2327 "over the payment of any fine or the forfeiture of any property under section 982(a)(6) from which such payment could be made or derived." The Department does not oppose this provision.

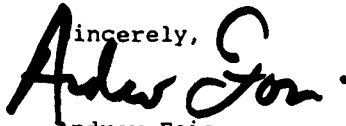
Section 4 of the bill would direct the United States Sentencing Commission to amend the Sentencing Guidelines "to increase by 2 levels the vulnerable victim adjustment [§ 3A1.1]." The Department notes that the currently proposed amendments to the Guidelines, which the United States Sentencing Commission sent to Congress on May 1, 1995, include a new three-level enhancement if the defendant intentionally selected a victim or property on the basis of race, religion, gender or certain other specified factors. These amendments also include a proposed revision in the commentary to § 3A1.1 that would authorize an upward departure, in addition to the two-point enhancement under § 3A1.1, if both the current offense and a prior offense involved a vulnerable victim, regardless of the type of offense. The need for an additional two-level enhancement for all cases that involve vulnerable victims, in light of these pending amendments, is not clear. It would be preferable for the Sentencing Commission to study the sufficiency of sentences involving vulnerable victims to determine if further enhancement are needed.

Section 5 of the bill would also direct the Sentencing Commission to amend the Sentencing Guidelines "to increase the offense level for any fraud offense by 2 levels if [the] defendant conducted activities to further the fraud from a foreign country in order to impede prosecution for the offense." The Department supports the concept of seeking enhanced punishment under the Guidelines for those who victimize persons in the United States through fraudulent schemes which are based outside the United States. As a practical matter, however, the proposed standard would require the government to establish, and the court to find, that the defendant had conducted his affairs beyond the United States' borders specifically to impede prosecution for the fraud offense of which the defendant was convicted. This standard, in many cases, would likely be exceptionally difficult to meet, as defendants could plausibly

claim that they conducted their business affairs in the foreign country simply because they wanted to reside and do business there. As an alternative, the Department would support a recommendation that the Sentencing Commission amend its commentary under the obstruction of justice enhancement provision of the Guidelines, section 3C1.1. This amendment would make clear that the two-point enhancement could be applied if the facts were sufficient to prove that the defendant had endeavored to obstruct the investigation or prosecution of a fraud offense by operating his fraudulent business from outside the United States.

Finally, section 6 of the bill would require all presentence reports required under the Federal Rules of Criminal Procedure to "include information about the age of each victim of each fraud offense for which a defendant is convicted." The Department supports the concept of acquiring additional information about the ages of fraud victims, so that better empirical evidence can be obtained by the courts and the Department about patterns of victimization. The wording of section 6, however, could unduly limit the amount of information available to sentencing courts. Because the proposed section 6 would limit the compilation of age information to victims "of each fraud offense for which a defendant is convicted," some courts might construe this provision to require age information only for persons actually named in the counts of conviction as victims, even though many more persons may have been victimized by the scheme to defraud that underlay the precise counts of conviction. Accordingly, the Department recommends that section 6 be revised to read as follows: "Any presentence report required under the Federal Rules of Criminal Procedure shall, to the maximum extent practicable, include information about the age of each victim of each scheme to defraud which has been proved as part of each fraud offense of which a defendant is convicted."

The Office of Management and Budget has advised that there is no objection to this report from the standpoint of the Administration's Program.

Sincerely,


Andrew Fois
 Assistant Attorney General

Mr. SCHUMER. Well, look, all I can say is continue your good work. I mean, this is a serious problem. I think each of us see it in our own congressional districts and hear the heart-wrenching stories of people who put their life savings, some of them, into these kinds of fraudulent claims, and we just need more of it.

Let me ask you just one other—how many people in the FBI now are working on telephone marketing fraud?

Mr. OWENS. I would estimate it at around 80 to 100 agents.

Mr. SCHUMER. How many were there two years ago?

Mr. OWENS. Less. Since about 1990, 1991, when we kicked off Operation Disconnect, we've increased our efforts. Again, part of the problem before was we were unable to devise specific investigative strategies to make maximum impact.

Mr. SCHUMER. Right.

Mr. OWENS. With Disconnect, we were able to use a relatively small number of agents and make much greater impact.

Mr. SCHUMER. And you'll be able to repeat that, I guess?

Mr. OWENS. The beauty of Senior Sentinel is it continues today. We're using actually the—in the past, the telemarketers have gained advantage by virtue of the fact that the victims can't physically identify them. Now we're hoping that they'll wonder when they call these repeat victims, Are they, in fact, talking to the actual victim or are they talking to somebody working on the investigation.

Mr. SCHUMER. Right. Could you use more agents? [Laughter.]

Mr. OWENS. We could, but, again, this problem is such that we can't—I don't think you could ever provide enough agents to pursue each individual complaint and investigate it that way. So we have to continue to try to do these types of initiatives.

Mr. SCHUMER. Well, I think it's great work really. It makes you proud of the FBI and U.S. attorneys' offices and the things you have done.

Thank you, Mr. Chairman.

Mr. HEINEMAN. Thank you, Mr. Schumer.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Mr. Chairman, I'll apologize at the outset. I've been playing musical chairs, meeting with school children from back home who were late. That's why I had to go back and forth. And my absence is not reflective of my interest in this area. This is an area I think that cries out for attention, and I'm glad to have our native North Carolinians up here today. It's good to have them prominent on the—in the panels that will appear before us.

The gentleman from New York raises a good point, but, as I said in my opening statement, when you're dealing with older Americans—as I said, I don't say that disparagingly because "I are one"—lonely Americans, lonely and therefore vulnerable, and perhaps in many instances they may lack the sophistication to see through these slick talkers.

Now speaking of slick talkers, is there any sort of a typical profile, age range, gender, sex? I mean, are most of them 25-year-old Caucasian females? And that would probably be difficult to portray, but let me hear from you, either one of you.

Mr. OWENS. Well, generally, my experience has been that they are typically younger. They're out to make a quick buck. They live

a very lavish lifestyle maybe or are sometimes involved in other criminal activity.

I have often said, if the victims actually had an opportunity to see who's on the other side of that phone, they wouldn't buy anything from them or give them any money.

Mr. COBLE. Yes.

Mr. OWENS. And I was hopeful when some of the arrests were covered by the news media in Operation Disconnect, just the description of some of those people I was hoping would send a message out to the public. I don't know if it has or not, but typically younger.

Mr. COBLE. Well, that would be my guess. Of course, you know, we must be ultimately politically correct. Let me say, when I said a 25-year-old Caucasian female—or a 35-year-old African-American male; I don't want anybody nailing me that I'm going on one side or the other.

Now the chairman touched on this briefly, and let me extend it, regarding Canadian, the Canadian involvement. You all may have commented on this in your testimony when I was away, but what are we doing specifically, if anything, to increase the prosecutions of criminal telemarketers who conveniently use Canada as a base of operations in order to evade law enforcement?

Mr. OWENS. We've had a number of meetings with Canadian law enforcement authorities and prosecutors. They're well aware of the problem. They're attempting to be very aggressive. They've executed a number of search warrants. They have some of these people on the run a little bit, but we're still having to work through that.

The prosecution of people in Canada is sometimes difficult, as it is here, because of the way they conduct business, the fact that there aren't victims in their back yards. It's a difficult problem. We are working through it. They seem to be genuinely interested in attempting to combat the problem, and, hopefully, we'll be successful at it.

Mr. DEMBIN. I know that we have sent tapes from our tape library to Canadian authorities. They do have an interest, but they have their own legal system to contend with.

Mr. COBLE. Mr. Owens, you said that the Justice Department has not weighed in on this pro or con. This appears—of course, any time legislation surfaces on this Hill, controversy usually follows. But I would find it difficult to find anything objectionable about this once the—is there a problem with this?

Mr. OWENS. I'm sorry, sir, I didn't follow your question.

Mr. COBLE. I said, when you said earlier that the Justice Department doesn't have an opinion on this one way or the other, this appears to be one of those rare birds where it would be difficult to find any objection to it. I find this God, mamma, and apple pie. Am I missing something?

Mr. OWENS. Well, no, I think you're probably accurate, and it's just that I'm not really at liberty to discuss what their position is.

Mr. COBLE. Yes.

Mr. OWENS. I have seen some paper they've generated on their evaluation and I know they're very interested in looking at it. We're also interested in—the Department of Justice coordinates a

telemarketing fraud working group which involves people from the private sector as well as the Federal investigative agencies. That group also is looking at what legislative fixes might be appropriate to deal with this.

Frankly, though, most of the problem here, in my personal opinion, is not more statutes; it's the difficulty in prosecuting these people when they use fictitious names, they move from one location to another. Sometimes the victims' testimony is not all that great in terms of their recollection. There are a number of other problems. The fraud and mail fraud statutes are very comprehensive and generally enable us to deal with this. Money-laundering, RICO, there are a number of statutes that enable us to deal with it, but we're certainly very interested in working with you for whatever improvements can be made.

Mr. COBLE. I think I have no further questions. I want to thank you all for being with us. The red light appears, so it's time for me to withdraw, Mr. Chairman. Thank you.

Mr. MCCOLLUM [presiding]. Thank you very much.

Before Mr. Scott is recognized, I understand we have a tape that you brought with you, Mr. Owens, and we now have the equipment to play that tape.

Mr. Scott, would you indulge the playing of the tape that Mr. Owens introduced into evidence, or if you wish to proceed first, you may. [Laughter.]

Mr. SCOTT. No, go ahead, play it.

Mr. OWENS. If you would like me to kind of set the stage a little bit, I can do that for you, so that perhaps—

Mr. MCCOLLUM. Yes, please do.

Mr. OWENS. This particular—and I think maybe Mitch referred to this earlier. The individual that's portraying the victim here is about a 35-year-old FBI agent who sounds every bit of the 83 that he's supposed to be. The particular call followed a call the previous day, where the undercover agent had agreed to pay \$2,600 when it was represented to him that he was going to win somewhere between \$5,000 and \$30,000 worth of money or prizes. And, essentially, it evolves into threats being made against the agent, and so forth.

The interesting thing or the unfortunate thing here is this particular victim came to our attention when he was very ill and subsequently died, and his daughter went to his apartment and found the telephone ringing off the hook from these telemarketers, and she then came to us and began to cooperate, and we assumed that telephone number, and that's how this tape started.

This is the tape then.

Mr. MCCOLLUM. The staff says they're waving the magic wand here [referring to playing a tape].

[Tape played.]

Mr. MCCOLLUM. Well, this is an interesting tape, but I think we've probably gotten the message. [Laughter.]

Mr. OWENS. It was about 10 minutes in total. We cut some of it out as much as we could.

Mr. MCCOLLUM. It sounds like this guy really was trying to get the poor gentleman to cough up no matter what, and that's a very excellent illustration.

Mr. Scott, you're recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Before I ask any other questions, Ms. Ritchey I think embarrassed everybody up here by suggesting she's called everybody, State and local and Federal, and no one seems particularly interested in pursuing her case. Have you talked to her since she—

Mr. OWENS. I've asked one of my associates, who's here, to get with her and—

Mr. SCOTT. So we can relieve ourselves of our embarrassment?

Mr. OWENS. Certainly, yes.

Mr. SCOTT. OK. So that's—Ms. Ritchey, I think you've got somebody working with you.

Ms. RITCHEY. Thank you.

Mr. SCOTT. On the Operation Disconnect, that tape was part of the Operation—

Mr. OWENS. Senior Sentinel. Senior Sentinel, the second operation.

Mr. SCOTT. Senior Sentinel. Did you ever have any of these people send a little money to see what would happen next?

Mr. OWENS. Actually, we did and that became the basis of many of the cases. In fact, it was Government money in many instances that was sent, yes.

Mr. SCOTT. And when you sent the money, that gave you—whoever cashed it, you knew—you connected with a live individual with a real name at that point?

Mr. OWENS. That would be part of the evidence, but it would generally be to a corporation, I suppose, or some entity.

Mr. SCOTT. And there were tapes like that played in court?

Mr. OWENS. Yes.

Mr. SCOTT. And what kind of time did the people get?

Mr. DEMBIN. It depends upon the amount of loss generated. It's solely governed by the loss sentencing guidelines. If the loss has not been significant, the sentence is not significant. If the loss is significant, the sentence is significant.

Mr. SCOTT. Well, the court can deviate from the sentencing guidelines for good cause.

Mr. DEMBIN. It can.

Mr. SCOTT. What kind of time? You say "not significant." What kind of time is that?

Mr. DEMBIN. If the losses generally are low, the defendants get probation. If the losses start getting up beyond \$100,000, \$150,000 into the quarter of a million range, they go to jail generally for about a year. The best we've done so far is 10 years.

Mr. SCOTT. Wait a minute. A hundred thousand dollars is a year?

Mr. DEMBIN. Generally, that's right.

Mr. SCOTT. OK.

Mr. DEMBIN. I'm simply stating the fact; I'm not supporting it.

Mr. SCOTT. I'm just listening to the fact.

You said you have all these tape recordings on file?

Mr. DEMBIN. Yes.

Mr. SCOTT. I assume that they're filed by the name that was given. Do you have any other way to file them, like some kind of—can you file them by voice or something? Is there any way to—or

just have somebody sitting up listening to tapes, because I assume these guys don't give the same name to everybody.

Mr. DEMBIN. Many of the illegal telemarketers use the same phone name while they're at one particular room. Some of them have been known to keep that same phone name when they go from room to room because they don't have great memories. We index them by the phone name that they use, by the company that they purport to be representing, and any other identifiers that we could find on the tape. We cross-reference that as we begin to prosecute people and find out from companies' records that we seize by search warrant who's used particular phone names in the past. We start trying to find the true identity among the several phone names. Once we find that, we cross-reference that as well.

Mr. SCOTT. So if you get somebody, a live individual in court, sometimes you can play a tape of them with one name and then with another name, the same person?

Mr. DEMBIN. That has happened, yes.

Mr. SCOTT. And do you have the technology to validate that it's the same person?

Mr. DEMBIN. Voice print technology is not currently accepted by the courts.

Mr. SCOTT. It is not?

Mr. DEMBIN. No.

Mr. SCOTT. OK. Are you working that?

Mr. DEMBIN. It's a question of the scientific validity. It's not a question of what—the rules of evidence permit it. At present I believe that the scientific validity has not been sufficiently established for a court to permit it to be used as evidence of identity.

Mr. SCOTT. You indicated that you could use more officers, and you said there are about 80 officers doing telemarketing fraud?

Mr. OWENS. Just the FBI.

Mr. SCOTT. FBI? How many FBI agents do you have working on, say, Whitewater?

Mr. OWENS. Six, seven.

Mr. SCOTT. Six?

Mr. OWENS. Something like that.

Mr. SCOTT. OK.

Mr. OWENS. It's been higher in the past.

Mr. SCOTT. I had heard 80.

Mr. OWENS. In the past, I'm not certain, but the numbers were greater at a different stage in the investigation.

Mr. SCOTT. OK. And this bill, you indicated that you haven't finished your analysis of the bill, but are there other issues that we ought to be looking into generally, some things that might help actually reduce the incidence beforehand, like education, more officers, that may not be in the bill that we ought to be looking at?

Mr. OWENS. In my opinion, as I said earlier, I don't think putting additional investigators on this problem, while it may make some impact, and certainly would make some impact, I think this problem has to be looked at in the greater context, education being one of the most important aspects. Families working together, knowing when their loved ones are becoming involved, if that's possible, and trying to help them work through that.

There are so many victims in this type of crime. I think a Lou Harris survey in the early nineties indicated that 92 percent of the public had received these mail solicitations, and the response is pretty great.

Mr. SCOTT. What portion?

Mr. OWENS. Ninety-two percent of the public. I mean, I've received them at FBI headquarters, a solicitation saying I had won a trip to Hawaii or something. I mean, the incidence is so great of this activity, or has been in the past, that there are so many victims that traditional investigative approaches of following one victim's victimization and trying to make a case on it is just extremely difficult.

Mr. SCOTT. Can I ask one little followup question on that point?

Mr. MCCOLLUM. Sure, Mr. Scott.

Mr. SCOTT. I don't—I have decided that the free trips and all that, you're better off just not even responding. Are some—some of those are promotional activities where they're trying to get you to buy their product and enticing you to listen to a sales pitch at which they make a sale. How many of those are bona fide promotions and what portion of those are outright fraud?

Mr. OWENS. Well, it's difficult to tell, but I think that also presents a prosecutive problem as to proving criminal intent. Maybe there is a trip there, if you go through a certain series of requirements. Those are very difficult cases to make.

I don't know if you want to comment on that.

Mr. DEMBIN. Generally, we focus on whether the pitch overall has been misleading or deceptive. The issue in every criminal case is, though, whether the person who made the statement over the phone knew that they were saying something that was false. The sales people tend to say, "I'm just reading a script. I assume the back room is doing what it's supposed to do." The owners say, "I strictly instruct my salespeople to follow a particular written page that contains no misreps. When I find out that they deviate, I fire them." It creates problems for us.

Mr. SCOTT. I don't want to prolong it, but, I mean, some of these places will give you a free trip to look at their condos and you get the overnight accommodations, one night, if you suffer through a 3-hour sales pitch. I don't know if that's fraudulent.

Mr. DEMBIN. We have received very, very few complaints of that type of activity being fraudulent. What we do see, however, is complaints about the time-share resale process, using telemarketing. Once you buy a time-share after having gone through this process and try and sell it, oftentimes that is where the con begins to occur, and it's usually by another company.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, Mr. Scott.

Mr. Bryant, you're recognized for 5 minutes.

Mr. BRYANT of Tennessee. Thank you.

Again, let me commend this panel for the work you're doing.

And I think, Mr. Dembin—and Mr. Owens, too—both point out that catching the folks is very difficult because they do work out of State and call States far away, and they tend to do everything they know how to do to avoid getting caught. But once they get caught, you brought up a good point about how difficult they are

to actually successfully prosecute because they are good at what they do.

It points me back to the deterrent, not the deterrent, but the prevention and more, such as I'm wondering if some sort of national hotline that is on radio/television that's run as a public service, that if you receive these kinds of intimidating calls where they're threatening to take you to court, or if you're in this—maybe one centralized hotline or something like that.

I think Mr. Schumer has raised a good point on these victims' lists that you find; where else do you have a list of prospective victims that you can work from, and again a letter, and, again, I know people will misuse that. We heard an example of that in the first instance with Ms. Downs, but, again, to alert these folks that "you are on the victims' list and to be leery of any future correspondence or telephone calls that you receive. You're a target."

It's just like we tell people, "Don't walk down this street by yourself at night; it's very dangerous." These are prospective victims there, and these are the same things in this type of crime.

But, again, I know you all probably have a lot of ideas sent to you. The tapes I think are great ideas. I'd like to get a copy of this one maybe.

I think the man is doing an imitation of President Reagan, if you listen very carefully there. [Laughter.]

It sounded like "Saturday Night Live" with that, but it was very effective.

The Sentencing Commission, again, I get a sense, Mr. Dembin, that you're talking about maybe we need to—our Sentencing Commission maybe needs to revisit some of these numbers. I don't know if you can talk about that.

Mr. DEMBIN. I can only tell you that in fraud cases the sentence ultimately received depends upon the amount of loss generated, and it's a fairly hard-and-fast rule. Yes, departures are asked for; they are occasionally received, but, as a general rule, the loss you generate ultimately determines the sentence that you get.

Mr. BRYANT of Tennessee. It's just hard for me to imagine somebody on this tape that gets probation and can walk away to another State and do this again. It's very difficult.

The victim venue I think is a good suggestion. What you're saying is maybe we need Federal legislation that would give jurisdiction in these types of crimes to the States where the victims are located?

Mr. DEMBIN. Many of the States have their own criminal jurisdiction. I recognize that some State attorneys general do have criminal jurisdiction and some do not. We work very closely with the ones that do to get them to use that jurisdiction and use our tapes.

Mr. BRYANT of Tennessee. But do the States have the ability to prosecute? Let's say, in Tennessee, where I'm from, they're getting calls from Las Vegas. The perpetrators are in Las Vegas; the victims are in Tennessee. Does that work out practically?

Mr. DEMBIN. It does now. We work together. The search warrants are obtained federally in Las Vegas or in San Diego. The evidence is seized and transported to whatever jurisdiction wishes to prosecute. The FBI generally will arrest the individual on the State

warrant and assist in the extradition to the appropriate State. We have been very successful since 1993 in doing this.

Mr. BRYANT of Tennessee. And you're saying that States like New Mexico and Iowa, I think in your statement, are on this list of "don't call" States—

Mr. DEMBIN. Yes, they are.

Mr. BRYANT of Tennessee [continuing]. Because they aggressively prosecute these folks?

Mr. DEMBIN. Yes, they are.

Mr. BRYANT of Tennessee. And if Tennessee and other States would aggressively prosecute, that would be another way maybe to effectively deter?

Mr. DEMBIN. Absolutely.

Mr. BRYANT of Tennessee. OK. Now my last question I'd like for you to answer, both of you. What is there—I know other than additional assets, prosecutors, judges, agents, and so forth, other than that, are there things that we can do with the technology? I know—I feel like in many instances the crooks have better technologies than we do, and we're unable to—our law has not kept up with that.

We've had an example recently of a multipoint wiretap, the roving wiretap, where we haven't been able to get that through. But are there things like that that you could suggest, ways that we could maybe make the laws easier to prosecute, ways that we could make technology more readily available to you in an investigation? I mean, is there anything else?

Mr. OWENS. I think there have been some things done. The FTC, for instance, has taken actions to attempt to put in preventive measures where calls can be made during certain hours or would-be victims can say, "Don't call me anymore," and there are ramifications to those type of actions.

Also, automatic dialing machines a few years in the past were being used to try to generate a lot of return calls. And, ironically, that was the basis of our Operation Disconnect. We represented that we were selling an automatic dialing system and we went against predicated telemarketing operations.

So there are some things that have been done and probably could be done. I can't articulate one to you right now, but we are continuing to look at that.

Mr. BRYANT of Tennessee. Mr. Dembin, do you have anything?

Mr. DEMBIN. As long as they can use the telephone, they're going to keep doing scams.

Mr. BRYANT of Tennessee. Real quickly, if I may ask one more question?

Mr. MCCOLLUM. Yes, Mr. Bryant.

Mr. BRYANT of Tennessee. The comment was made earlier, I think in the first panel, maybe Ms. Ritchey, this technology of the caller ID, if a senior citizen or a person has caller ID and it would register, that would be one way, would it not, that they could identify? Ms. Downs said she was afraid to answer the phone because—and she wanted to talk to her children, but she didn't know who was calling. Maybe that type of technology is available to the individuals that they could use, if it registers; sometimes it doesn't show the number. That's another idea, too.

OK, thank you.

Mr. MCCOLLUM. Thank you, Mr. Bryant.

I've just got a couple of quick questions that perhaps haven't been answered completely. I'm curious, Mr. Owens, Mr. Dembin, what the range of caller ID technology is that you use. What do you run into? Do you have satisfactory technology to deal with this?

Mr. OWENS. We would do it in the context probably of a trap-and-trace or we use pin registers with court orders to be able to identify calls being made. I'm not a technical expert, but there are a number of technologies that we do utilize in these investigations.

Mr. MCCOLLUM. Do you recommend to senior citizens that they attempt to record their own conversations, when they have them with people who call in? Is that a recommendation you'd make?

Mr. OWENS. There are many instances where we do make that recommendation, yes. Working with them, many times if we think they are a repeat victim and it's one that we can pursue investigatively, many times we'll give them recording equipment, and I suspect a lot of the tapes in the tape library were generated in that fashion.

Mr. MCCOLLUM. Do you recommend, whether it's through your agency or some other agency of government, that there be a public awareness campaign to encourage senior citizens to make recordings whenever they get calls like this and they're suspicious of them, and then bring them forward to you or to law enforcement generally?

Mr. OWENS. I strongly recommend it. In fact, when we get letters, we have a sheet we call "Tele-Tips" that we routinely attach to letters going back to people who write us. One of the reasons we've generated the type of briefing material that we have, that I think probably this committee and various Members of Congress have seen, when these operations surfaced, is we created documents that could be made public to attempt to educate.

Mr. MCCOLLUM. Well, the question really is, Who's doing that and is it being done with any degree of resources that are sufficient to make it widely known? Do you have any feel for that?

Mr. OWENS. I don't think there's a full-scale coordination of it. I know a lot of people are doing it. Certainly the FTC is; we are, and I'm sure others. There's a lot of it being done, but I don't know that—

Mr. DEMBIN. A lot of it is being done locally. To the extent that it's being done nationally, we've been working with the AARP to do that. I spoke at their biennial convention in Anaheim a year and a half ago, and that was very successful.

Mr. MCCOLLUM. Well, Mr. Dembin, one last question for you, while you're there at the microphone: my understanding is that in Iowa and New Mexico you said that they have "don't call" boards, and I guess they're considered bad States by those who are the fraudulent telemarketers. Why?

Mr. DEMBIN. They aggressively reach out to prosecute the telemarketers from where they're calling. They are the prime practitioners of the victim venue prosecution program. They have been successful in bringing people from Las Vegas, from San Diego, from Florida into tiny little courtrooms in rural counties in their States to face the neighbors of the very people that they swindled, and it

is a difficult experience for the telemarketers and they do end up suffering some severe consequences, even just sitting in the county jails for a while.

Mr. MCCOLLUM. In other words, the local prosecutors are the ones that are responsible for that; right?

Mr. DEMBIN. They're responsible for initiating the prosecution; we're responsible for assisting them in doing the warrants and getting the defendants to them.

Mr. MCCOLLUM. But they're just basically taking the time to do it and some of the larger States are not, is what you're saying?

Mr. DEMBIN. That's true.

Mr. MCCOLLUM. Well, I want to thank the panel very much for coming today. I appreciate your participation, and we'll excuse you and go on to the next panel at this point, but you've been a valuable contribution. Thank you.

Mr. DEMBIN. Thank you.

Mr. MCCOLLUM. Our final panel today consists of several witnesses involved in the prevention and education of telemarketing fraud. If you can come forward, I will introduce you, and we're getting your names put up on the dais at this point.

First, we have Officer Tony Cincotta, if I've pronounced that correctly—you all correct me, if I make those mistakes, please—from the Training Academy of the Montgomery County Police Department in Rockville, MD. Officer Cincotta is a former detective and a member of the SWAT team. Currently, he is an academy instructor teaching courses in, among other things, elderly abuse and neglect.

Our next witness is John Barker, vice president of the National Consumers League and director of the League's National Fraud Information Center and Alliance Against Fraud in Telemarketing. Mr. Barker is very familiar with congressional affairs, as he served as a special assistant to the Watergate prosecutor and was press secretary to President Clinton during his first term as Governor.

Next we have Evalyn Brendel from Raleigh, NC, on behalf of the American Association of Retired Persons. Maybe it's Brendel; is that right?

Ms. BRENDEL. It's Brendel.

Mr. MCCOLLUM. Brendel; I got it right the second time.

Ms. BRENDEL. You did.

Mr. MCCOLLUM. Thank you.

She is the vice chair of the State legislative committee in North Carolina and is also the chair of the Capital City Task Force in Raleigh.

Also with us this morning is Mr. Bruce Thompson. Mr. Thompson is the special assistant to the North Carolina attorney general. His work focuses specifically on investigating and prosecuting fraud crimes.

Our final witness today is Mr. James Martin, president of the 60 Plus Association. The 60 Plus organization has over 425,000 citizen members nationally. Mr. Martin is a 1962 graduate of the very esteemed University of Florida, which is my alma mater. I have to give Mr. Heineman equal time to say something about Raleigh to Ms. Brendel, I am sure.

Mr. Martin is another witness who is very familiar with congressional affairs, as he served as chief of staff to former Congressman and later Senator Ed Guerney of Florida.

And I welcome all of you today and look forward to hearing your testimony.

We're going to proceed in the order in which I introduced you. Let me say immediately that your full written testimony, all of you, for the record, will be admitted, without objection, and it is so admitted. And if you could summarize, it would be helpful.

We have a recorded vote that's in progress, but I think that we can probably do 10 minutes or so of conversation, if I can start with the testimony, Officer Cincotta. I'm just going to move from my left to my right, and anything that you have to produce for us that you'd like to put into the record, other than that which already is automatically going in, in some summary form, we'd appreciate it.

STATEMENT OF TONY CINCOTTA, OFFICER, MONTGOMERY COUNTY POLICE TRAINING ACADEMY

Mr. CINCOTTA. Yes, sir. Thank you. I appreciate very much the committee allowing me to speak today. I will be very brief, if that's the case.

First, I'd like to say that I have met many victims as an investigator, as a detective, in Montgomery County, MD, as a police officer, like Ms. Downs. It was very difficult for me to interview individuals like this who were victims of scam crimes, all kinds of scam crimes, up to and including telemarketing and other transient criminal-type activities, such as a pigeon drops, residential burglary diversion type of scam. It was mentioned earlier, home improvement scams; police imposter scams, which was obviously the one I hated the most, and so on and so on.

I had an 89-year-old victim a few years back who actually wrote me a written statement about what had happened to her after she came forward after a friend had convinced her to speak to the police. She started her statement by saying, "Another day in infamy," and then she began her statement, and it was very difficult for me to investigate that case—not only by reading her statement, but also by her reaching out to me, touching my hand, and saying, "Detective Cincotta, they took everything." And it was \$13,600. It took 2 years and I finally captured that individual, and the unfortunate thing about it was my victim had passed away.

And that is why telemarketers target and scam artists and transient criminals who travel throughout the United States and Canada today target senior citizens, mainly because of that type of vulnerability; also, because seniors are from a time when it was OK to trust people; it was rude to hang up on people when they called on the telephone. And senior citizens are always home; most are retired. Other people in the neighborhood are at work; the kids are at school. They're out tending their gardens, and so forth, and they speak to strangers because they remember a time when it was OK to shake hands or even leave their homes open.

And that's how burglary diversion suspects slip into the home. While one suspect is diverting a senior citizen while they're working in their yard, a second would slip into their home, immediately attack a bedroom, and take jewelry and cash, and so forth.

We have been in Montgomery County educating our police officers as much as we can on these types of criminal activities. We have been prosecuting people more and more. I belong to a national organization called the National Association of Bunco Investigators, which is 600 police officers throughout the United States and Canada who track these individuals and we try to pass on intelligence information to each individual agency because these people move so much. And we can almost predict where they're going. As you said earlier, the panel said earlier about following the sun, this is not a seasonal-type activity; this is an activity that goes on all year long.

In conclusion, I would like to mention just one of the primary prevention organizations that has just begun to involve seniors, and that's something called the Triad Program. This is a national initiative program that is sponsored nationally by the American Association of Retired Persons, the International Association of Chiefs of Police, and the National Sheriffs Association.

This is an organization that just began, as I said; 280 counties throughout the United States are involved out of the 3,000, so forth. And we're trying to expand the program as much as we can. It's a crime prevention-type program that just improves the quality of life of senior citizens, so they don't have to be so afraid that they can't answer the phone, answer the door, or speak to a stranger.

[The prepared statement of Mr. Cincotta follows:]

I AM OFFICER TONY CINCOTTA WITH THE MONTGOMERY COUNTY MARYLAND DEPARTMENT OF POLICE. IT HAS BEEN MY PLEASURE TO SERVE AS A POLICE OFFICER FOR MORE THAN TWENTY SIX YEARS.

DURING MY CAREER I HAVE INVESTIGATED ALL TYPES OF CRIMINAL ACTIVITY. MANY OF THESE CRIMES HAVE BEEN COMMITTED AGAINST ONE OF THE MOST VULNERABLE SEGMENTS OF AMERICAN SOCIETY - OUR SENIOR CITIZEN POPULATION. CAREER CRIMINALS TARGET OUR SENIORS IN MANY WAYS. THE ORDINARY TELEPHONE AS WELL AS THE POSTAL SYSTEM HAVE BECOME INSTRUMENTS THAT FOCUS ON SENIORS SPECIFICALLY.

SENIOR CITIZENS ARE VULNERABLE BECAUSE THEY COME FROM A PERIOD IN OUR HISTORY WHEN IT WAS "POLITE" TO SPEAK TO STRANGERS. THEY WERE TAUGHT THAT IT WAS RUDE TO HANG UP ON SOMEONE WHO CALLS THEM ON THE TELEPHONE. OUR SENIORS CAN REMEMBER WHEN A HANDSHAKE ACTUALLY MEANT SOMETHING. MY PARENTS AND GRANDPARENTS TOLD ME THAT THEY OFTEN LEFT WINDOWS AND DOORS TO THEIR HOME OPEN AND UNLOCKED WHEN THEY WERE AWAY. KEYS WERE OFTEN LEFT IN THEIR UNLOCKED AUTOMOBILE. EVERYONE TRUSTED EVERYONE ELSE. TODAY, MANY SENIORS HAVE THAT SAME TRUST IN PEOPLE.

MOST SENIOR CITIZENS ARE RETIRED AND THEREFORE ARE GENERALLY AT HOME. WHEN THE TELEPHONE RINGS THEY ANSWER IT. WHEN A CON ARTIST SPEAKS - THEY LISTEN. WHEN THEY ARE OFFERED A DEAL THAT IS TOO GOOD TO BE TRUE - THEY MAY ACCEPT IT. "YOU MAY ALREADY BE A WINNER", THE SALE OF LIFE OR MEDICAL INSURANCE POLICIES, VITAMIN SUPPLEMENTS, CEMETERY PLOTS AND SO ON. WE MUST EDUCATE OUR SENIORS TO "JUST SAY NO".

THE TELEPHONE IS NOT THE ONLY METHOD THAT SENIORS ARE BEING "RIPPED OFF". GROUPS OF TRANSIENT CRIMINALS TRAVEL THE COUNTRY WHO COMMIT VARIOUS TYPES OF FRAUD AND SCAM CRIMES. THESE HIGHLY ORGANIZED GROUPS COMMIT AN ASSORTMENT OF CRIMINAL ACTIVITY. FOR EXAMPLE, SENIORS ARE VICTIMS OF "PIGION DROPS", "RESIDENTIAL BURGLARY SCAMS", "HOME IMPROVEMENT FRAUD", "UTILITY IMPOSTER FRAUD", "POLICE IMPOSTER SCAM" TO NAME A FEW. MANY SENIORS ARE ON A FIXED INCOME AND ARE UNABLE TO TURN DOWN A GREAT DEAL THAT IS "JUST TOO GOOD TO BE TRUE". IT IS ESTIMATED THAT ONLY TEN PERCENT OF THESE SCAM CRIME VICTIMS ACTUALLY MAKE A REPORT TO THE POLICE. IN FACT, MOST OF THE VICTIMS WILL NOT EVEN TELL THEIR FAMILY OR FRIENDS. IT'S JUST TOO EMBARRASSING TO BE TAKEN.

WHAT CAN THE POLICE AND PUBLIC DO TO ASSIST IN "CRIME PROOFING" OUR SENIORS? MANY POLICE AND SHERIFF'S DEPARTMENTS HAVE CHOSEN A PROGRAM CALLED "TRIAD". "TRIAD" IS A NATIONAL INITIATIVE SPONSORED BY THE NATIONAL SHERIFF'S ASSOCIATION, THE INTERNATIONAL ASSOCIATION OF CHIEF'S OF POLICE AND THE AMERICAN ASSOCIATION OF RETIRED PERSONS. LOCAL TRIAD PARTNERSHIPS ARE COMMITTED TO WORK TOGETHER TO ENHANCE THE QUALITY OF LIFE OF OLDER AMERICANS. TRIAD IS A COMMUNITY POLICING INITIATIVE AMONG SENIORS, LAW ENFORCEMENT AND SERVICE PROVIDERS TO INCREASE SAFETY THROUGH COMMUNITY AWARENESS PROGRAMS AS WELL AS THE CREATION OF MANY NEW CRIME PREVENTION METHODS. TRIAD ENDORSES MORE THAN COMMUNITY BASED CRIME PREVENTION INITIATIVES FOR SENIORS. SENIORS ARE URGED TO CREATE "S.A.L.T. COUNCILS". S.A.L.T. IS AN ACRONYM FOR "SENIORS AND LAW ENFORCEMENT TOGETHER". WITHIN THESE S.A.L.T. COUNCILS SENIORS ORGANIZE AND PLAN ACTIVITIES AND PROGRAMS IN THE FIELD OF CRIME PREVENTION. OUR SENIORS NO LONGER NEED TO BE PRISONERS IN THEIR OWN HOME. TRIAD WORKS. THANK YOU VERY MUCH.

Mr. McCOLLUM. Thank you, Mr. Cincotta.

Mr. Thompson, I'm going to recognize you. We'll try to time this, so that about 5 minutes from now we're going to take a recess and we will come back. We're not going to skip anybody's testimony.

Please proceed.

**STATEMENT OF R. BRUCE THOMPSON II, SPECIAL COUNSEL,
NORTH CAROLINA DEPARTMENT OF JUSTICE**

Mr. THOMPSON. Thank you.

Telemarketing fraud has emerged in the nineties as a very serious problem in North Carolina. The Consumer Protection Section of the North Carolina Department of Justice receives about 100,000 complaints per year, and consistently, telemarketing fraud is ranked as the No. 1 complaint.

Now there are very few of the fraudulent telemarketers operating within the State of North Carolina. We're what's considered to be a victim State, and probably the No. 1 reason for that is the large number of retirees that locate in North Carolina.

And, as you've heard today, their stories are often heart-breaking. We have evidence of a Durham County woman who lost \$212,000. A woman in Buncombe County, which is in the western part of the State, was hit by 21 different telemarketers, and she lost \$73,000.

Because we're dealing with criminals who obviously don't have a conscience, it requires a hard-line approach to drive them out of our State. Attorney General Easley's created a three-pronged approach to prevent telemarketing fraud in North Carolina. We believe that the program is working because many of the fraudulent telemarketers are avoiding North Carolina. In the list referred to earlier, North Carolina appears as a state to avoid.

In Attorney General Easley's three-pronged approach, the first prong is education and prevention; the second prong is civil litigation, and the third is legislation. I will address each one of them very briefly.

First of all, education. When Attorney General Easley came into office, he created a nonprofit foundation that is housed in the Department of Justice. Its sole purpose is to educate citizens of North Carolina on consumer fraud. We brought together business leaders, consumer groups, and members of our staff to try to figure out how to educate the public on these issues.

The first thing we did was create a 22-minute video that instructs senior citizens on how to prevent telemarketing fraud. We used three scenarios that had been submitted to our office of actual cases, and we also created a workbook to go along with this video.

The foundation sponsored a meeting in Raleigh where each of the extension agents in all 100 of our counties came. We trained them on how to use this program. We gave each of them a copy of the video, and now they've gone out and are educating senior citizens in every county of North Carolina. We also have plans to distribute the video to the AARP volunteers in North Carolina and have them spread the word.

The other thing that we've done as far as education goes is create three 30-second public service announcements that briefly give senior citizens some pointers on how to avoid these criminals. Every

television station in North Carolina aired these PSA's, donating a substantial amount of free time for them to be aired.

In the area of civil litigation, this is probably the area that's done more to drive the telemarketers out of North Carolina than anything else. Beginning in March 1994, we started to use the civil process as a way of attacking the fraudulent telemarketers. We've sued more than 40 defendants over the course of the last 2 years, and one of the reasons that this has helped is that the judges in North Carolina have been very willing to enter a restraining order without direct evidence of large numbers of victims. If we can come up with one victim and document crimes against them. The judges are often willing to enter that restraining order.

Earlier I believe Ms. Ritchey spoke about the courier services being used to pick up checks. The national courier services have been very cooperative with our department, and once a restraining order is in place, oftentimes they will refuse service to these businesses across the United States. So, hopefully, we're able to shut down that part of their business through actions in North Carolina.

We've also sued two Canadian firms because the trend of late has been for people to move across the border into Canada and call citizens in North Carolina. We got a restraining order against a company called Regent Distributors of Toronto, and they immediately ceased calling people in North Carolina. They've even offered a victim restitution. The only problem is that, though they're leaving North Carolina, they continue to do business across the United States.

The other group was called International Awards out of Ontario, and we sued this firm, obtained a restraining order, and then the Canadian authorities were able to conduct a raid on their firm.

We have developed helpful contacts with the folks in Canada, but oftentimes they don't have adequate resources to deal with the problem, and we feel like this trend is going to continue; they're going to continue moving to Canada to make the calls. We hope that the legislation that Representative Heineman has proposed is going to make it more difficult for these firms to operate.

And then, lastly, we've had legislation in North Carolina to require the telemarketers to register, if they're going to do business in North Carolina, and also to post a bond if they're going to offer sweepstakes. It seems to have worked in other States and we hope that it will work in North Carolina also.

[The prepared statement of Mr. Thompson follows:]

PREPARED STATEMENT OF R. BRUCE II, SPECIAL COUNSEL, NORTH CAROLINA
DEPARTMENT OF JUSTICE

North Carolina is best described as a "victim" state as it relates to the fraudulent telemarketing industry. Very few of the fraudulent telemarketers have set up their "boiler-room" operations inside our state. Instead, the telemarketers set up their operations in other states and Canada to solicit North Carolina citizens as part of their scams. It is common for a telemarketing victim to lose a large amount of money in a relatively short period of time. For example, the following cases have been reported to North Carolina's Attorney General: a Durham County woman lost \$212,000; a Buncombe County woman was hit by 21 different telemarketers and lost \$73,000; and a Raleigh woman lost \$80,000 to 15 telemarketing firms.

A concerted effort by the North Carolina Department of Justice has reduced the number of telemarketing complaints in North Carolina. Many fraudulent telemarketers are recognizing North Carolina as a state that should be avoided. In fact, North Carolina has appeared on a list circulated by a Canadian firm warning that

it should be avoided. The main reason that North Carolina has emerged as a state to avoid is Attorney General Mike Easley's three-pronged approach to combating telemarketing fraud. The three components of his program are: 1) education/prevention; 2) civil litigation; and 3) legislation.

EDUCATION/PREVENTION

Attorney General Mike Easley created the Partnership for Consumer Education as a means of educating the citizens of North Carolina on consumer fraud issues. The Partnership provides a positive means of preventing consumer fraud before it occurs. By creating a dialogue among business leaders, consumer educators, and the Attorney General, the Partnership seeks to pro actively augment the efforts of the Consumer Protection Section of the North Carolina Department of Justice.

The Board of Directors of The Partnership for Consumer Education, chaired by Attorney General Easley, consists of state business leaders, law enforcement officers, and citizens from a variety of community-based organizations. All share one goal—to create and implement a comprehensive education campaign to prevent consumer fraud in North Carolina.

To accomplish its task, the Partnership produces and distributes video training programs designed to educate the citizens of North Carolina in the prevention of consumer fraud. The Partnership also produces informational brochures, workbooks, and fact sheets to be used in conjunction with the videos and for distribution to consumers through businesses, consumer groups, and the North Carolina Cooperative Extension Service.

The first project for the Partnership was the creation of an education program on the prevention of telemarketing fraud. The Partnership developed a twenty-two minute video and accompanying workbook aimed at instructing senior citizens on how to avoid fraudulent telemarketers. At a training session in Raleigh, the staff distributed a copy of the video to Cooperative Extension Agents in each of North Carolina's one hundred counties. Each Extension Agent will conduct local educational sessions for senior citizens in a cooperative effort to reach as many people as possible.

The Partnership also produced three television public service announcements on telemarketing fraud that were aired throughout North Carolina in the latter part of 1995. These announcements were aimed at helping citizens over the age of fifty avoid telemarketing fraud. Every television station in North Carolina joined our effort by donating a substantial amount of free air time for these important announcements to be broadcast.

CIVIL LITIGATION

The main reason that telemarketers are avoiding North Carolina is the zeal with which the attorneys in our Consumer Protection Section have pursued them through civil litigation. Beginning in March of 1994, Attorney General Easley and his staff utilized civil actions as a means of driving fraudulent telemarketers out of North Carolina. Over the course of the last two years, more than 40 fraudulent telemarketers have been sued by the State of North Carolina. One reason that civil actions have been so effective is that North Carolina judges have been willing to enter restraining orders without direct evidence of large numbers of North Carolina victims. North Carolina was also the first state to obtain a Temporary Restraining Order against a telemarketing company in federal court.

For the scams to work, the fraudulent telemarketers must have a means of obtaining money from the victims immediately. The most effective manner for them to accomplish this task is to send a courier to the victim's house to pick up a check. With the cooperation of the national courier services, the North Carolina Department of Justice has limited this practice. Once a restraining order is in place, we notify the courier services who then refuse to provide their services nationwide, essentially shutting down the fraudulent operation.

The trend of late has been for fraudulent telemarketer calls to come in from Canada. In 1995, Attorney General Easley brought two legal actions against Canadian telemarketing firms. The first firm, Regent Distributors, Inc. of Toronto, offered a common sweepstakes pitch as a lure to get victims to purchase cheap merchandise at high costs. Regent ceased calls into North Carolina as soon as the restraining order was served and is now offering victim restitution. Even though this company is avoiding North Carolina, it continues doing business across the United States under the names Regent, Genesis, and Loew's.

International Awards of Ottawa, Ontario informed call recipients that they had won \$10,000 in cash but needed to advance a "15% nonresident withholding tax through paragraph 174(a)(4) of the Revenue Canada Code" in order to collect their

cash anytime in the near future. Attorney General Easley sued the firm and obtained a restraining order in June of 1995. Canadian authorities attempted to raid the operation in July of 1995 but found only an abandoned boiler room.

The North Carolina Department of Justice has developed helpful contacts with some of the Canadian law enforcement officials handling telemarketing issues. The only problem is that these officials often do not have adequate resources to deal with the problem. Attorney General Easley feels that the advantages of running telemarketing scams on U.S. citizens from Canadian soil make it very likely the number of such operations will increase. We hope that legislation such as the Consumer Fraud Prevention Act, proposed by Representative Heinemen, will make it more difficult for these firms to operate across international borders.

LEGISLATION

Attorney General Easley is a key proponent of The Telephonic Seller Registration & Bonding Act (SB 723) in the North Carolina General Assembly. The purpose of this bill is to allow quick identification and prosecution of deceptive telemarketers. The bill also makes it a crime to offer telemarketer recovery schemes.

SB 723 requires telemarketers to register with the Secretary of State before commencing their solicitations in North Carolina. It also requires a telemarketer to secure a bond for the benefit of North Carolina citizens if they plan to offer sweepstakes and prizes in North Carolina. The registration information is valuable to the Attorney General because the Consumer Protection attorneys often do not become aware of fraudulent telemarketing operations in the state until months after they have disappeared.

Violations of the registration and bonding requirements will enable the Attorney General to obtain restraining orders quickly without having to develop evidence of the number of victims or the manner in which they are being scammed. The bill also provides for increased civil penalties of up to \$25,000 for violations involving older victims and allows relief under North Carolina's Unfair and Deceptive Trade Practices Act.

The North Carolina Senate approved the bill in 1995 and the House is expected to follow suit in 1996. Once the bill becomes law, our attorneys will have an increased arsenal with which to combat the fraudulent telemarketers.

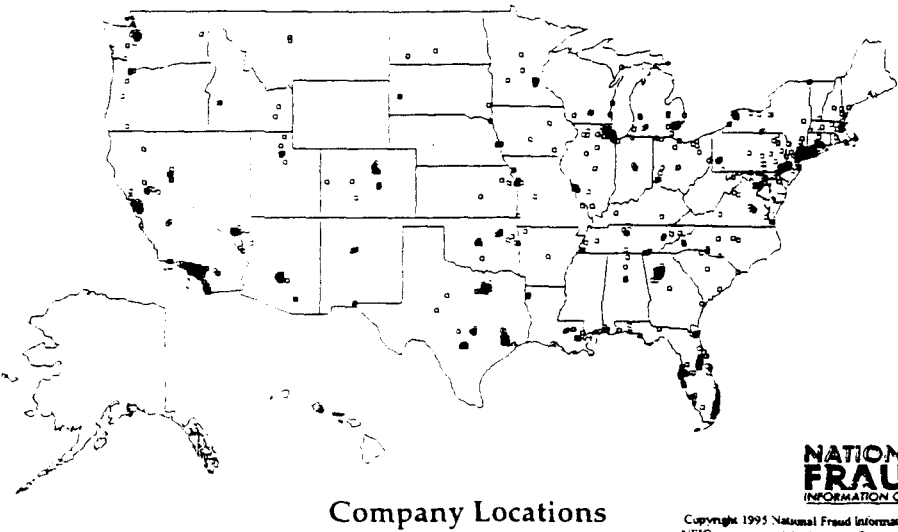
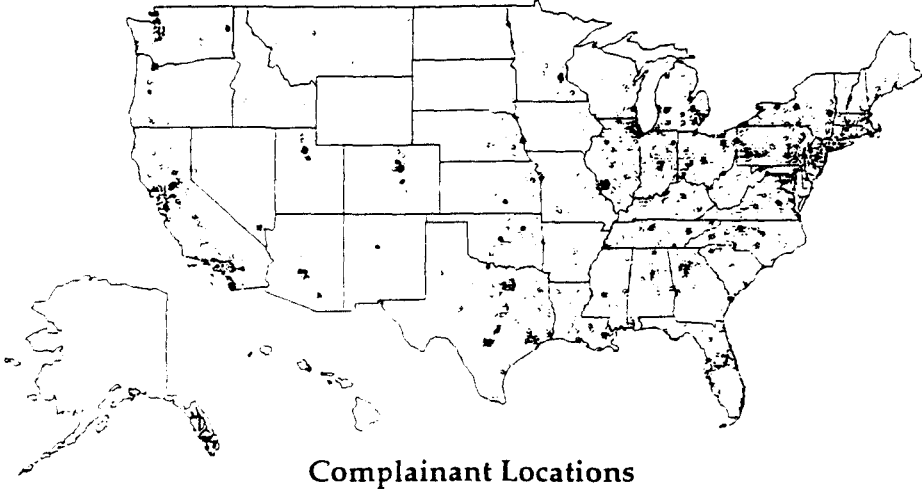
CHALLENGES FOR THE FUTURE

The fraudulent telemarketers are changing their tactics as the pressure on them intensifies. One trend is to elude authorities by setting up an operation that easily moves from place to place. This is often accomplished through the use of leased cellular phones. Another pressing problem is that once a state such as North Carolina cracks down on a scam, the telemarketer will move to another state and prey upon its citizens.

The transitory nature of the problem requires cooperation between state and federal officials as well as the assistance of authorities from other countries. Recent collaborative efforts such as Project Telesweep have proven successful in apprehending the fraudulent telemarketers. Continued joint efforts, sharing of information, and legislation making it easier to take action against these criminals will be necessary to protect our citizens from this crisis.

National Fraud Information Center

March - August, 1995



**NATIONAL
FRAUD
INFORMATION CENTER**

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MEMORANDUM

TO: All Representatives

FROM: Management

DATE: Monday December 4, 1995

This is just to let you know that the state of OHIO (OH) is now considered a delete state. If by chance you receive any leads for this state please bring them back to me and I will gladly exchange them for you.

Please note that the states of IOWA (IO) and UTAH (UT) are no longer considered to be bad states.

For your reference:

DELETE STATES

OREGON (OR)
 NORTH CAROLINA (NC)
 MINNESOTA (MN)
 WASHINGTON (WA)
 WISCONSIN (WN)
 NORTH DAKOTA (ND)
 WEST VIRGINIA (WV)
 IDAHO (ID)
 OHIO (OH)
 WYOMING (WY)
 OKLAHOMA (OK)
 MISSISSIPPI (MS)

NEWS & RECORD

Greensboro, North Carolina

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Editorial Page Editor

Ned Cline
Associate Editor

Beware of those who promise a lot for a little

● They'll probably never deliver.

North Carolina Attorney General Mike Easley is spending \$50,000 in public money to alert state residents, particularly the elderly who live alone, to the hazards of telemarketers who promise something for nothing. It's a wise use of money, Easley says, because people in this state have been bilked out of millions by smooth-talking telephone sales people.

He's got a point. Fraudulent salesmen prey on gullible people, especially retirees and others who are lonely and can't — or don't — say no to what they think is a chance to win gifts or cash.

Easley has approved use of the public money to broadcast TV spots mostly in the Triad warning people against giving out their credit card numbers to phone salespeople or sending checks. In addition to buying television time, Easley's consumer protection staff says the state has received private donations and has been given free broadcast time for showing the warnings on a regular basis. The attorney general has also enlisted the help of consumer groups, notably the Association of Retired Persons, to help spread the educational message against fraudulent or bait-and-switch telephone merchants.

It's a good buy, consumer protection spokesman Alan Hirsch says, because people in this state have been tricked into paying out more than \$250,000 in the last year alone to telemarketers while getting little or nothing

in return. Mostly, these phone sellers hit and hook the elderly who often aren't astute enough to see through the sales pitch or who, in many cases, go along out of loneliness just to have someone to talk with. Telemarketers, according to Hirsch, have networks of names and swap lists in an effort to enhance profits, often with several companies working the same gullible consumer.

State law is lacking needed muscle, Hirsch said, for charging these salespeople with criminal acts because they move about and change names frequently. Easley's office, however, has filed civil actions against several companies and helped recover some money for elderly residents who've been suckered.

The N.C. General Assembly earlier this year debated, but failed to enact, a criminal statute that would make it easier to track and charge fraudulent salespeople.

Slick telemarketers aren't new to North Carolina. But Hirsch says they're expanding and increasing their pressure tactics.

The best advice is to just hang up on people who promise you free gifts or sweet-heart deals by phone. That's the only sure way not to wind up a loser.

You can't help but wonder why so many people fall for such phone-sales lines, but it's clear that they do. If Easley's efforts result in more people being aware of the risks of such sales, he will have done his job of helping protect consumers. These people are generally promising something they never deliver.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1995

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SENATE BILL 723
Commerce Committee Substitute Adopted 5/25/95

Short Title: Telephone Consumer Protection 2/AB.

(Public)

Sponsors:

Referred to: Finance

April 13, 1995

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN
NORTH CAROLINA AND TO MAKE THE OFFERING OF TELEPHONE
SALES RECOVERY SERVICES A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a
new Article to read:

"ARTICLE 32."Telephonic Seller Registration and Bond Requirement."§ 66-251. Definitions.As used in this Article, unless the context requires otherwise:

- (1) 'Gift or prize' means any premium, bonus, award, or any other thing of value.
- (2) 'Item' means any good or any service. 'Item' includes coupon books, vouchers, or certificates that are to be used with businesses other than the seller's business.
- (3) 'Owner' means a person who owns or controls ten percent (10%) or more of the equity of, or otherwise has a claim to ten percent (10%) or more of the net income of, a telephonic seller.
- (4) 'Person' includes any individual, firm, association, corporation, partnership, joint venture, or any other business entity.
- (5) 'Principal' means an owner, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole

- 1 proprietorship, a trustee of a trust, or any other individual with
2 similar supervisory functions with respect to any person. -
- 3 (6) 'Purchaser' or 'prospective purchaser' means a person who is
4 solicited to become obligated to a telephonic seller or to make any
5 donation or gift to any person represented by the telephonic seller.
- 6 (7) 'Room operator' means any principal, employee, or agent
7 responsible for the operational management and supervision of
8 facilities from which telephonic sales calls are made or received.
- 9 (8) 'Salesperson' means any individual employed, appointed, or
10 authorized by a telephonic seller, whether referred to by the
11 telephonic seller as an agency, representative, or independent
12 contractor, who attempts to solicit or solicits a sale on behalf of the
13 telephonic seller.
- 14 (9) 'Secretary' means the Office of the Secretary of State.
- 15 (10) 'Telephone solicitation' or 'attempted telephone solicitation'
16 means any telephonic communication designed to persuade any
17 person to purchase goods or services, to enter a contest, or to
18 contribute to a charity, regardless of whether the telephone call
19 initiating the solicitation is placed by the (i) telephonic seller or (ii)
20 a person responding to any unsolicited notice or notices sent or
21 provided by or on behalf of the seller, which notice or notices
22 represents to the recipient that he or she has won a gift or prize,
23 that the recipient may obtain or qualify for credit by contacting the
24 seller, or that the seller has buyers interested in purchasing the
25 recipient's property.
- 26 (11) 'Telephonic seller' or 'seller' means a person who, directly or
27 through salespersons, causes a telephone solicitation or attempted
28 telephone solicitation to occur. 'Telephonic seller' and 'seller'
29 does not include any of the following:
- 30 a. A person who is offering or selling a registered security and
31 is licensed to sell such security in North Carolina.
- 32 b. Any person conducting sales or solicitations on behalf of a
33 licensee of the North Carolina Utilities Commission or the
34 Federal Communications Commission.
- 35 c. Any insurance agent or broker who is properly licensed by
36 the Department of Insurance and who is soliciting within the
37 scope of the agent's or broker's license or any employee or
38 independent contractor of an insurance company licensed by
39 the Department of Insurance conducting sales or
40 solicitations on behalf of that company.
- 41 d. Any federally chartered bank or savings institution or any
42 bank or savings institution properly licensed by the State or
43 subject to federal regulating authorities.

- 1 e. Any organization already accorded section 501(c)(3)
2 nonprofit status under the Internal Revenue Code, any
3 'charitable solicitor' properly licensed under Article 2 of
4 Chapter 131F of the General Statutes, or any person exempt
5 under G.S. 131F-3 from Chapter 131F of the General
6 Statutes.
- 7 f. A person who periodically issues and delivers catalogs to
8 potential purchasers and the catalog:
 - 9 1. Includes a written description or illustration and the
10 sales price of each item offered for sale;
 - 11 2. Includes at least 24 full pages of written material or
12 illustrations;
 - 13 3. Is distributed in more than one state; and
 - 14 4. Has an annual circulation of not less than 250,000
15 customers.
- 16 g. A person engaging in a commercial telephone solicitation
17 where the solicitation is an isolated transaction and not done
18 in the course of a pattern of repeated transactions of a like
19 nature.
- 20 h. A person primarily soliciting the sale of a newspaper of
21 general circulation, a publisher of a magazine or other
22 periodical of general circulation, or an agent of such a
23 publisher acting pursuant to a written agency agreement.
- 24 i. A person soliciting the sale of services provided by a cable
25 television system operating under the authority of a local
26 franchise.
- 27 j. Any passenger airline licensed by the Federal Aviation
28 Administration.
- 29 k. Any person holding a real estate broker's or sales agent's
30 license under Chapter 93A of the General Statutes.
- 31 l. Any person soliciting a transaction regulated by the
32 Commodities Futures Trading Commission, provided the
33 person is registered or temporarily licensed by the
34 Commodities Futures Trading Commission under the
35 Commodity Exchange Act, 7 U.S.C. § 1 et seq.
- 36 m. Any person soliciting a purchase from a business, provided
37 the person soliciting makes reasonable efforts to ensure that
38 the person solicited has actual authority to bind the business
39 to a purchase agreement.
- 40 n. A foreign corporation which has for the preceding 12
41 months held and maintained a certificate of authority to do
42 business in this State pursuant to Article 15 of Chapter 55 of
43 the General Statutes and which only does business in this
44 State using the name set forth in the certificate of authority.

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- o. An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. section 781) and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.
 - p. A person soliciting the sale of food, seeds, or plants when a sale does not involve an amount in excess of one hundred dollars (\$100.00) directed to a single address.
 - q. A person soliciting:
 1. Without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;
 2. Who does not make the major sales presentation during the telephone solicitation but arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser; and
 3. Who does not cause an individual to go to the prospective purchaser to collect payment for the purchase or to deliver any item purchased directly following the telephone solicitation; or
 4. Who offers to send the purchaser descriptive literature and does not require payment prior to the purchaser's review of the descriptive literature.
 - r. A person soliciting the purchase of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made.
 - s. A book, video, or record club or contractual plan or arrangement:
 1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.
 2. Which is regulated by the Federal Trade Commission trade regulation concerning 'use of negative option plans by sellers in commerce'.
 3. Which provides for the sale of books, records, or videos which are not covered under paragraphs 1. or 2. of this sub-subdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise

1 to a consumer who has consented in advance to
2 receive such merchandise on a periodic basis.

3 t. A person who for at least two years has been operating
4 under the same name as that used in connection with its
5 telemarketing operations and retail establishment in North
6 Carolina where consumer goods are displayed and offered
7 for sale on a continuing basis if a majority of the person's
8 business involves the buyers obtaining services or products
9 at the person's retail establishment.

10 u. A person:

11 1. Who provides telephone solicitation services under
12 contract to sellers;

13 2. Who has been operating continuously for at least
14 three years under the same business name; and

15 3. For whom at least seventy-five percent (75%) of the
16 person's contracts are performed on behalf of other
17 persons exempt under this section.

18 "§ 66-252. Registration of telephonic sellers.

19 (a) Not less than 10 days before commencing telephone solicitations in this State,
20 a telephonic seller shall register with the Secretary by filing the information required
21 in G.S. 66-253 and paying a filing fee of one hundred dollars (\$100.00). A telephonic
22 seller is doing business in this State if it solicits or attempts to solicit prospective
23 purchasers from locations in this State or solicits or attempts to solicit prospective
24 purchasers who are located in this State.

25 (b) The information required in G.S. 66-253 shall be submitted on a form
26 provided by the Secretary and shall contain the notarized signatures of each principal
27 of the telephonic seller.

28 (c) Registration of a telephonic seller shall be valid for one year from the effective
29 date thereof and may be annually renewed by making the filing required in G.S. 66-
30 253 and paying the filing fee of one hundred dollars (\$100.00).

31 (d) Whenever, prior to expiration of a seller's annual registration, there is a
32 material change in the information required by G.S. 66-253, the seller shall, within 10
33 days after the material change, file an addendum with the Secretary updating the
34 information.

35 "§ 66-253. Filing information.

36 (a) Each filing submitted to the Secretary shall contain all of the following
37 information:

38 (1) The name or names, including any assumed names, under which
39 the telephonic seller is doing or intends to do business in this State.

40 (2) The telephonic seller's business form and place of organization
41 and, if the seller is a corporation, copies of its articles of
42 incorporation and bylaws and amendments thereto, or if a
43 partnership, a copy of the partnership agreement.

- (3) Complete street address of the telephonic seller's principal place of business.
- (4) The complete street address of each location from which telephone solicitations are placed by the telephonic seller.
- (5) A listing of all telephone numbers to be used by the telephonic seller, including area codes, and the complete street address of the business premises served by each number.
- (6) The name and title of each principal.
- (7) The complete street address of the residence, the date of birth, and the social security number of each principal.
- (8) The true name, street address, date of birth, and the social security number of each room operator, together with the room operator's full employment history during the preceding two years.
- (9) The name and address of all banks or savings institutions where the telephonic seller maintains deposit accounts.
- (10) The name and address of each long-distance telephone carrier used by the telephonic seller.
- (11) A summary of each civil or criminal proceeding brought against the telephonic seller, any of its principals, or any of its room operators during the preceding five years by federal, State, or local officials relating to telephonic sales practices of each. The summary shall include the date each action was commenced, the criminal or civil charges alleged, the case caption, the court file number, the court venue, and the disposition of the action. For purposes of this section, a 'civil proceeding includes' means assurances of voluntary compliance, assurances of discontinuance, consent judgments, and similar agreements executed with federal, State, or local officials.

(b) For purposes of this section, 'street address' does not include a private mail service address.

"§ 66-254. Bond requirement: prizes and gifts.

(a) At least 10 days before the commencement of any promotion offering any gift or prize with an actual or represented market value of five hundred dollars (\$500.00) or more, the telephonic seller shall notify the Secretary in writing of the details of the promotion, fully describing the nature and number of all gifts or prizes and their current market value, the seller's rules and regulations governing the promotion, and the date the gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent with notifying the Secretary under this subsection, the telephonic seller shall post a bond with the Secretary for the market value or the represented value, whichever is greater, of all gifts or prizes represented as available under the promotion. The bond must be issued by a surety company authorized to do business in this State. The bond shall be in favor of the State of North Carolina for the benefit of any person entitled to receive a gift or prize under the promotion who did not receive it within 30 days of the specified date of award. The amount

1 recoverable by any person under the bond shall not exceed the market value, the
2 represented value of the gift or prize, or the amount of any consideration or
3 contribution paid by that person in response to the telephone solicitation, whichever
4 is greatest.

5 (b) Within 45 days after the specified date of the award of the gift or prize, the
6 seller shall provide, in writing, to the Secretary, proof that the gifts or prizes were
7 awarded. The writing shall include the name, address, and telephone number of all
8 persons receiving awards or prizes. The bond shall be maintained until the Secretary
9 confirms the awards.

10 (c) The Attorney General, on behalf of any injured purchaser, or any purchaser
11 who is injured by the bankruptcy of the telephonic seller or its breach of any
12 agreement entered into in its capacity as a telephonic seller may initiate a civil action
13 to recover against the bond.

14 "§ 66-255. Calls made to minors.

15 A telephonic seller must inquire as to whether the prospective purchaser it is
16 contacting is under the age of 18 years of age. If the prospective purchaser is under
17 18 years of age, the telephonic seller must discontinue the call immediately.

18 "§ 66-256. Offers of gifts or prizes.

19 (a) It shall be unlawful for any telephonic seller to make a telephone solicitation or
20 attempted telephone solicitation involving any gift or prize when the solicitation or
21 attempted solicitation:

22 (1) Requests or directs the consumer to further the transaction by
23 calling a 900 number or a pay per call number.

24 (2) Requests or directs the consumer to send any payment or make a
25 donation in order to collect the gift or prize.

26 (3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

27 (b) Notwithstanding subsection (a) of this section, a telephonic seller may offer a
28 gift or prize in connection with the bona fide sale of a product or service.

29 "§ 66-257. Penalties.

30 (a) Any violation of this Article shall constitute an unfair and deceptive trade
31 practice in violation of G.S. 75-1.1.

32 (b) In an action by the Attorney General against a telephonic seller for violation
33 of this Article, or for any other act or practice by a telephonic seller constituting a
34 violation of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five
35 thousand dollars (\$25,000) for each violation involving North Carolina purchasers or
36 prospective purchasers who are 65 years of age or older.

37 (c) The remedies and penalties available under this section shall be supplemental
38 to others available under the law, both civil and criminal.

39 (d) Compliance with this Article does not satisfy or substitute for any other
40 requirements for license, registration, or conduct imposed by law.

41 (e) In any civil proceeding alleging a violation of this Article, the burden of
42 proving an exemption or an exception from a definition is upon the person claiming
43 it, and in any criminal proceeding alleging a violation of this Article, the burden of

1 producing evidence to support a defense based upon an exemption or an exception
2 from a definition is upon the person claiming it."

3 Sec. 2. Chapter 14 of Article 52 of the General Statutes is amended by
4 adding a new section to read:

5 "§ 14-401.15. Telephone sales recovery services.

6 (a) Except as provided in subsection (c) of this section, it shall be unlawful for any
7 person or firm to solicit or require payment of money or other consideration in
8 exchange for recovering or attempting to recover:

9 (1) Money or other valuable consideration previously tendered to a
10 telephonic seller, as defined in G.S. 66-251; or

11 (2) Prizes, awards, or other things of value that the telephonic seller
12 represented would be delivered.

13 (b) A violation of this section shall be punishable as a Class 1 misdemeanor. Any
14 violation involving actual collection of money or other consideration from a customer
15 shall be punishable as a Class H felony.

16 (c) This section does not apply to attorneys licensed to practice law in this State,
17 to persons licensed by the North Carolina Private Protective Services Board, or to
18 any collection agent properly holding a permit issued by the Department of Insurance
19 to do business in this State."

20 Sec. 3. Section 2 of this act becomes effective January 1, 1996, and
21 applies to offenses committed on or after that date. The remaining sections of this
22 act become effective October 1, 1995, and apply to violations occurring on or after
23 that date.

Mr. MCCOLLUM. Well, I thank you, Mr. Thompson. And you're ending very timely because it's right when we need to take this break.

We'll take a recess, and as soon as the vote's over, we'll be back. The committee is in recess.

[Recess.]

Mr. MCCOLLUM. The subcommittee will come to order.

It seems that Officer Cincotta was not feeling well. I'm sorry he had to dismiss himself—or we dismissed him, I should say.

But since the table's gotten a little shorter, it hasn't changed any; it's your turn, Mr. Barker, and you're recognized.

STATEMENT OF JOHN F. BARKER, VICE PRESIDENT, NATIONAL CONSUMERS LEAGUE, AND DIRECTOR, NATIONAL FRAUD INFORMATION CENTER

Mr. BARKER. Thank you very much, Mr. Chairman.

I wanted to take just a few brief moments to bring a couple of points to the committee's attention. No. 1, during the previous witnesses' testimony here, I kept wanting to stand up in the audience and say, "We do that. We've got that."

I represent the National Fraud Information Center, which has a national and Canadian toll-free hotline where victims or potential victims of fraud can call between the hours of 9 and 5:30 every day, and we hope we get people who have not yet been victimized because we have professional counselors on the phone who talk to them and advise them and tell them in most cases, "No, don't do that. You're going to lose your money."

We also get a lot of people who have already lost their money, and these people, we provide them with information which they can use, and referrals. And, also, the other half of what we do is to take all of the information down in our computers and refer that information directly to the appropriate law enforcement agency, often within 1 to 3 minutes of the time the call comes to the office. So that in the case of our first witness today, where she wanted to know who has ownership over this particular case, we can get that to the owner very quickly.

We handle approximately 350 to 400 major fraud cases each day. We wish we could more. Our telephones are jammed now. By June, we expect to be extending our calling hours until about 8:30 in the evening and also providing weekend service and putting on more counselors.

But we are a private, nonprofit organization, and our annual budget for doing this is approximately half a million dollars a year, all of which I have to go out and scrounge for every year in order to keep us going.

We refer all of our cases to the Federal Trade Commission/National Association of Attorneys General electronic fraud data base, where the data is used by a variety of Federal, State, and local agencies. We're very young. We've only been around for about 2 or 3 years, and we hope that the word will get out to more people that this service is available to victims.

Approximately 60 percent of the people who contact the National Fraud Information Center, Mr. Chairman, are senior citizens.

And the other thing I wanted to say very briefly is that we've been doing a lot of work with the AARP on the problem of fraud and the elderly. And the witness for the AARP I'm sure is going to talk to you about that some more, and it's included in their testimony.

The major problem that we face with elderly fraud victims today is simply the fact that they don't associate this activity with crime, that the person on the other end of the telephone is a crook. We've done surveys; we've done focus groups, and in most cases they will say that the person is a con artist or "I didn't get a good deal" or "I lost my money," but they don't realize that this person is not a cute little co-ed earning her way through college, but is actually a real criminal and could be put in jail for doing this.

So in educating the consumer, in educating senior citizens, we have a very basic job to do, which is to get them to associate this activity with crime, because at this point they don't hang up; they won't hang up. That gentleman that you heard the recording of should have slammed the receiver down as soon as that guy said, you know, "I'm going to take you to court if you don't pay me," but they don't do it; they hang on. And I'm afraid that that gentleman—I didn't hear the end of the conversation, but he may have gone ahead and sent the money just because he couldn't hang up.

So in dealing with this problem——

Mr. SCOTT. Mr. Barker, he was an FBI agent, so he was——

Mr. MCCOLLUM. Yes, he was.

Mr. BARKER. The old man was?

Mr. MCCOLLUM. He was the FBI agent playing a role on that tape. He was not playing a role; he was real, but he was in there in lieu of the elderly gentleman——

Mr. BARKER. OK.

Mr. MCCOLLUM [continuing]. Who was originally contacted.

Mr. BARKER. I missed that part of it, I'm sorry. But had he been real, I'll bet you 90 to 1 that the money would have changed hands.

As I say, it's just a very basic problem that we have. And, as a first step, what we're working on is to try to get people to realize that they are dealing with crooks.

I wanted to say, too, that we very much appreciate Representative Heineman's introduction of H.R. 1499. We're particularly interested in the problem of the movement of boiler rooms from the United States to Canada. We have approximately 350 suspect operations in our computers right now which are victimizing U.S. citizens from north of the border. And to be able to impose more severe penalties on these people, when and if they're caught, is certainly something that we feel that law enforcement in the United States here would certainly appreciate.

So I thank you very much again, Mr. Chairman, for the opportunity to present testimony to you today, and thank you again for your interest and your concern in what we feel is a problem. Thank you.

[The statement of Mr. Barker follows:]

PREPARED STATEMENT OF JOHN F. BARKER, VICE PRESIDENT, NATIONAL CONSUMER LEAGUE, AND DIRECTOR, NATIONAL FRAUD INFORMATION CENTER

Mr. Chairman and Members of the Committee, National Consumers League and its National Fraud Information Center are pleased to appear before this Subcommit-

tee today to report to you on the plight of elderly fraud victims. We also wish to comment on legislation currently before this committee which seeks to provide elderly fraud victims with protection and resources, as well as put the criminals who feed on elderly victims where they belong - behind bars.

The National Fraud Information Center has been working closely with colleagues at the American Association of Retired Persons as both our organizations embark on a massive coordinated effort to give the elderly new resources to avoid becoming a victim of fraud.

In late February, the National Consumers League hosted a four-day working session with many of the nation's leading experts in gerontology, financial psychology, social marketing, telemarketing fraud, and consumer protection. The objective was to focus our collective expertise and energies on the problem of fraud and the elderly. It has been clear to us for some time now that older Americans have not been responding positively to warnings about what can happen when they pick up the phone and talk to strangers. More than 60 per cent of the fraud victims contacting our national fraud hot line for assistance are individuals age 65 or older. Their losses, Mr. Chairman, total, not in the millions, but in the billions. It is likely that senior citizens account for at least half of the \$60 billion annual loss due to fraud.

You will hear today about recent survey research and other information on senior citizens' response to telephone solicitations—that many are unable to tell the difference between legitimate and fraudulent telemarketing; that the majority of senior citizens will not hang up on callers because they do not want to appear to be rude; and that more and more senior citizens are falling prey to fraudulent solicitations. The excellent research work performed by the American Association of Retired Persons gives us an increasingly accurate picture of what we face in dealing with fraud and the elderly. Most important, the new data compiled by AARP has identified the "triggers," so to speak, which are at the heart of older persons' willingness to agree to fraudulent telephone offers.

What emerged from our working group on fraud and the elderly were two major concerns: first, that we must begin to treat elderly fraud victims—not as isolated cases—but as a widespread social problem which must be addressed in the same manner as other problems which take an unacceptably heavy toll on resources and self-esteem. The second is that we must convince senior citizens that the person on the other end of the phone who is taking our money is not just a clever con artist, but a crook. Third, we must provide families with the tools to understand and work together to deal with the behavioral patterns which contribute to vulnerability. And we must all recognize that what we are dealing with is serious, pervasive, intrusive, and psychologically destructive to its victims a clear and convincing case of elder abuse.

Congress, Mr. Chairman, has recognized the seriousness of the problem. In 1964, it enacted landmark legislation under *The Crime Control Act* imposing stiff penalties on felons who prey on older victims. The Congress continued this work by enacting *The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994* (PL 103-297). This legislation established authority for the Federal Trade Commission to regulate all telemarketers and to impose stiff civil penalties on the estimated 10 per cent or so who engage in systematic misrepresentation, deception, and harassment. The Act resulted in promulgation of the Telemarketing Sales Rule on January 1 of this year.

The Telemarketing Sales Rule establishes clear guidelines for legitimate telemarketers and serves to warn the Criminal that federal and state authorities will prosecute infractions of the rule. It will play a positive role in curtailing this criminal activity.

The Telemarketing Sales Rule, Mr. Chairman, is the key to federal and state enforcement efforts aimed at curtailing telemarketing fraud. It provides new authority for state law enforcement agencies to go after illegal operations targeting their citizens. It also takes aim at the ability of illegal telemarketers to move quickly to avoid detection and investigation.

In most respects, the enforcement climate is much better today than it was even a year and a half ago. Federal and state agencies are working together to combat fraud; federal and state agencies are working together with consumer protection agencies and organizations like the National Fraud Information Center to promote joint efforts to target and remove illegal operations preying on elderly victims. The recent joint operation by the FBI, FTC, state Attorneys General, and other law enforcement groups—known as Operation Senior Sentinel—is one outstanding case in point.

We are also the beneficiaries of growing support on the part of private industry and the financial services community. NFIC is sponsored by American Express,

AT&T, VISA, MasterCard, AT&T Universal Card Services, MCI, Federal Express, and Citibank.

Federal Express has been working with us for three years now to intervene on behalf of potential fraud victims—mostly elderly—who request FEDEX services to send overnight checks and cash to crooks Operating illegal telemarketing promotions. FEDEX customer service Personnel refer such callers directly to the National Fraud Information Center where they are counseled about the likelihood that their money will end up in the pockets of a criminal and not at the IRS to pay taxes on a spectacular cash prize. Western Union and credit card issuers provide similar services for fraud victims who contact them.

The technology of detection is greatly enhanced by new systems which enable us to identify, locate, and report illegal operations—not in weeks, not in days, not in hours, but in minutes after initial reports are received. Our National Fraud Information Center handles approximately 350 fraud cases each day. The information we receive is forwarded automatically to appropriate jurisdictions and agencies usually within three minutes of the time a call is received here in the office.

Late last year, for example, an 86-year-old woman in Fort Lauderdale, Florida, learned through an article in *The Miami Herald* that Canadian boiler rooms were ripping off U.S. victims. She realized that she had just been taken. The afternoon before she had received a call from Toronto urging her to send \$2,000 in cash to recover funds she had lost to previous telemarketing scams. The Toronto operation—a recovery room, as it is called convinced her to send the money by overnight carrier. She called the NFIC hot line immediately and reported the incident. The NFIC Fraud Net system immediately relayed her report to the Metropolitan Toronto police. Police owners identified the location of the operation from the NFIC report, dispatched officers to check it out, and saw a courier approaching the recovery room with an envelope. They seized the envelope, identified it as coming from the woman in Fort Lauderdale. They opened it, took out the woman's cash, and called her to report the recovery. The woman took it all in stride. Thanks, she replied, and hung up the phone. All this took one hour and twenty minutes.

Now, this does not happen every day. But it does illustrate the success we are having in identifying and tracking illegal Operations. unfortunately, it also illustrates a growing trend: the removal of boiler rooms to Canadian locations.

The National Fraud Information Center has tracked the growth in Canadian-based telemarketing operations for some time now and believes that many operations are moving to Canada because of the Telemarketing Sales Rule. The number of suspect Canadian operations in our database now exceeds 320. They are located mainly in Montreal, Toronto, and Vancouver.

Canadian authorities receive our incident reports on these boiler rooms. The frauds they describe include sweepstakes operations, recovery rooms, work at home schemes, advance fee loan operations, lotteries, and credit repair schemes—all of which are regulated or prohibited under the Telemarketing Sales Rule.

We expect to see this trend Continue.

I urge the Committee to consider this problem in light of the heavy toll it takes on elderly victims. The telephone solicitations often do not make it clear that the calls originate outside the United States. Many do not realize that U.S. rules do not always apply abroad: credit card dispute resolution procedures, criminal enforcement, and three-day cooling off periods.

H.R. 1499, sponsored by Representative Heineman, a member of this committee, would amend the U.S. Sentencing Commission's guidelines to increase the offense level if a convicted defendant carried out his or her fraudulent activities from a foreign country. We believe that this provision would be a welcome addition to the law enforcement community's arsenal.

I also wish to bring to the Committee's attention, Mr. Chairman, the widespread use of alternative payment and transaction technologies by fraudulent telemarketing operations. No longer do we see crooks dealing only in cash, checks, or credit cards. Today's telemarketing boiler room uses a Sophisticated range of electronic and paper debit technologies which are used to extract payment from a victim and put it in the pockets of a con artist at record speed.

The Crime Control Act of 1994 was instrumental in making one such practice clearly illegal. It is no longer possible for fraudulent telemarketers to use private courier services to receive funds from victims. That practice is now a violation of the Mail Fraud Statute.

Many criminals now use wire transfer services such as Western Union to get money quickly and anonymously. Criminals engaging in telemarketing fraud now ask a victim to call Western Union and, using their credit cards, wire money instantly to any one of thousands of convenience store outlets around the country where it can be claimed with little or not difficulty.

Other criminals use negotiable paper drafts or electronic funds transfer to secure payment. These Payment mechanisms are widely used by telemarketing operations which either have no official merchant status with one of the major credit card affiliates or who deal with customers who generally do not have credit cards. Many older Americans are asked for their checking account numbers and approve withdrawals from their accounts without realizing what they are doing or the fact that, once proffered, the number can be used again and again or sold to other telemarketers.

The Telemarketing Sales Rule now regulates these transactions and the Commission's Bureau of Consumer Protection is moving vigorously to prosecute violations. But it is important for the committee to understand that many older Americans do not understand the technology, the way these Payments are processed, or the potential for abuse which exists when dealing with sophisticated electronic payments systems. They often fall prey to criminals who count on Confusion to extract funds from unwitting victims.

As the use of alternative payment methods proliferates, Mr. Chairman, we see no parallel increase in consumer awareness of what these transaction methods involve, the risks of using them, and the ability to block completion of transactions if a problem arises. Many of our elderly callers do not understand, for example, that it is possible to stop payment on a check before it has cleared. They are unfamiliar with banking regulations and practices, unschooled in the Uniform Commercial Code and Federal Reserve regulations. They do not Understand that most banks engage in batch processing of check and do not check each transaction on an account to make sure that it is legitimate.

Most Americans are familiar with the warning that they should never give out their credit card numbers over the phone. But few translate this into a general warning that they should not give out *any* financial information—bank account information, mother's maiden name, social security number—to anyone who calls.

The studies performed by the American Association of Retired Persons and additional research conducted by the National Fraud Information Center indicate that many elderly Americans cannot and will not hang up the phone even when they should have reason to believe that the person on the other end of the phone is up to no good. They simply do not understand that the caller may be a crook. A recent focus group of elderly fraud victims heard one senior citizen recount writing a thank you letter to a crook in Las Vegas who had taken her for thousands of dollars. She lost the money, but was grateful for the cheap trinket he sent her.

Since we are dealing with an American consumer who fails to recognize the criminal nature of fraud and is not able to disconnect when a smooth talking crook is on the other end of the line, we know we have a long way to go in educating senior citizens about the pitfalls of various alternative payment systems involved in illegal transactions.

Finally, Mr. Chairman, I would like to brief the Committee on the growing problem of fraudulent commercial transactions on the internet. You might think that this is a problem generally restricted to younger Americans. On the contrary, many older Americans are surfing the net, taking advantage of a wide variety of electronic information, entertainment, and merchandising promotions available on the world wide web.

The internet, while not yet a major player in fraudulent transactions, is a growing source of concern to service providers, to users, and to the credit card industry. We now have full time staff working on Intel net fraud and are part of a network created by the Federal Trade Commission and the National Association of Attorneys General designed to monitor and track incidents of internet-related fraud. At this point, Mr. Chairman, everyone involved is working together to make sure that, as the internet grows as a medium for commercial transactions, the web is a safe place to shop.

There is no doubt that fraud strikes hardest at its elderly victims. The financial toll is enormous—in the billions of dollars each year. Many elderly fraud victims are easy prey, because they lack the defenses necessary to withstand the smooth talking promoter who sounds like and acts like a close member of the victim's family. The won't hang up. They will not report the crime. And they will not confide in sons and daughters or friends.

We all were taken aback When we found out that the typical elderly fraud victim is not aware that such activity is illegal and that the person on the other end of the phone is not a cute little college girl earning money to pay her tuition, but more likely a hardened criminal feeding an expensive dope habit. Therefore, for those of us who deal in consumer education and intervention with elderly fraud victims, the first step is to convince them that illegal telemarketing is a crime, punishable by a heavy fine, a prison term, or both.

When we have convinced these victims, Mr. Chairman, they will begin to hang up on crooks and report incidents to authorities.

We wish to thank the Subcommittee for its interest and concern. We are dealing with a social problem of major proportions which will require dedication and intensive work on the part of all of us. Today's hearing marks an important step in that direction and we applaud you and the committee for your efforts toward that end.

Thank you very much.

Mr. MCCOLLUM. You're quite welcome. And I think it is a very serious issue.

And as I introduce Ms. Brendel to make her comments, if I slip out and turn this back over to Mr. Heineman again a minute, it's not because I have a lack of interest; it's because we have a floor issue on the terrorism bill and matters that may take me away from here very shortly.

But, Ms. Brendel, please proceed.

STATEMENT OF EVALYN BRENDEL, VICE CHAIR, NORTH CAROLINA STATE LEGISLATION COMMITTEE, AMERICAN ASSOCIATION OF RETIRED PERSON

Ms. BRENDEL. OK, thank you very much. The American Association of Retired Persons appreciates this opportunity to testify.

Since you do have a complete statement in your packet of my testimony, I would strongly urge you go through it because it does have some important facts and figures in there. I'll just hit a few of the major points we wanted to cover that are based on a survey that the AARP conducted. The research was conducted over a period of 2 years.

You've already heard that the elderly are being targeted for these telemarketing frauds. I'd also like to bring your attention the fact that the population of the elderly will increase considerably within the next decade. So we do have a potential problem looming ahead of us.

Also, in the previous testimony and statements we heard a great deal about "what do we do about this." Well, the FBI has recognized that the best method of combating telemarketing fraud is an educated consumer who recognizes telemarketing fraud. And I would like that point to stay with us. In the survey information, several characteristics presented a profile of the "victim."

Now these victims, contrary to a great deal of misperceptions perhaps, were more highly educated than we believed. They had a higher income level than most of us are associate with the victims. They also were very socially active in their communities. But problems occurred because they found a great deal of difficulty hanging up the phone—just as the previous speaker mentioned. It's very difficult for them to say, "No, thank you," and slam that phone down. And I can tell you it is very difficult. My husband, an engineer, a very assertive person, would hand the phone to me to disconnect the conversation. He couldn't do it.

A second characteristic is that the victims could not recognize or distinguish the difference between a legitimate telemarketer and a fraudulent call. And here is a key problem we do need to address. In general, according to the research, over 40 percent of the elderly people or the seniors cannot distinguish between a legitimate call and a fraudulent one. And I can tell you it is very difficult personally because I've had that problem many times. I almost got caught

once because they talk very quickly; they give you a lot of information; and you can take all the notes you want. It takes two or three times to be able to distinguish, uh-huh, this is not a legitimate sales call for me.

So those are some of the things that we wanted very much to bring out as far as the senior is concerned or the potential victim. In their various research sessions, people would say over and over again they just couldn't tell the difference. So we do have some recommendations to make.

AARP is in the process of doing a great deal of consumer education. That's one of our strongest elements, and we are focusing a lot of work on this. But we would also like to recommend that Federal law enforcement agencies be encouraged and supported in continuing their innovative investigations and aggressive prosecutions.

We also feel that it is important that we look ahead to what is coming technologically. The Internet is an excellent opportunity, and you might say cyber fraud is on the horizon, if it's not here already. It may surprise you, Mr. Heineman, that of the seniors in North Carolina—and we're talking about people over 50—the majority of them have computers, and 80 percent of those people are using that computer to surf the net for fun, not for business. So look at the potential problems that we have there to address, not just in the telemarketing area.

AARP also recommends that consumer education regarding these risks be identified as a priority for the Department of Justice, the Federal Trade Commission, and the other agencies who deal with these consumer issues.

And, finally, as my concluding remarks, I would like to commend this committee for its aggressive and farsighted efforts to call attention to telemarketing fraud. Thank you very much.

[The prepared statement of Ms. Brendel follows:]

PREPARED STATEMENT OF EVALYN BRENDL, VICE CHAIR, NORTH CAROLINA, STATE LEGISLATIVE COMMITTEE, AMERICAN ASSOCIATION OF RETIRED PERSONS

The American Association of Retired Persons (AARP) appreciates this opportunity to testify on telemarketing fraud and the older consumer. The Association commends the committee for its examination of this complex problem. As part of our statement, AARP is submitting consumer research conducted over the past two years that attempts to reveal more about victims' behavior, attitudes, and values with regard to telemarketing fraud.¹ It is our hope that this research will move us closer to effective prevention methods and messages.

Law enforcement officials, AARP research, and even anecdotal evidence from telemarketers themselves confirm the belief that older Americans are being targeted by fraudulent telemarketers. The Federal Bureau of Investigation (FBI) documented this pattern of victimization in its recent successful telemarketing investigation "*Operation Senior Sentinel*," which used AARP members and others to obtain undercover tapes of conversations with fraudulent telemarketers. The information obtained during that lengthy investigation indicated that more than 78% of the targeted victims were older.² Given the expected growth in the nation's elderly population, the number of consumers considered vulnerable to telemarketing fraud will likely increase in the future.

¹See *Telemarketing Fraud and the Older Consumer: An AARP Survey* (the Survey Report), AARP, Washington, DC, 1996, and *Telemarketing Fraud and the Older Consumer: A Report of Focus Group Discussions* (the Focus Group Report), AARP, Washington, DC, 1996.

²U.S. Department of Justice, Federal Bureau of Investigation, *Senior Sentinel Telemarketing Fraud*, Washington, DC, December 5, 1995. In that report, older consumers are defined as those over 55.

The Federal Trade Commission (FTC) recently promulgated a new Telemarketing Sales Rule which took effect on January 1 of this year.³ It corrects many telemarketing abuses and was designed to send a clear message to consumers and the industry that some telemarketing abuses will not be tolerated. A participant in the FTC's rulemaking proceeding, AARP believes the FTC's rule takes great strides forward in protecting consumers. The Association was particularly pleased to see a joint federal-state enforcement mechanism put in place.

AARP was disappointed, however, that the FTC did not establish a bright line delineating permissible and non-permissible activities. In attempting to reduce the burden of rule compliance upon legitimate telemarketers, the FTC has also reduced the likelihood that consumers will be able to distinguish between legitimate and fraudulent telemarketers.

Under the FTC's rule, telemarketers cannot make misrepresentations about the limited number of telemarketing activities that they are required to disclose. Since disclosures are not mandated on the full range of issues consumers will likely confront in telemarketing transactions, the FTC has placed the burden on consumers to ask all of the right questions and to rely upon answers provided to determine legitimacy. This is something most older consumers admit they are unable to do.

In addition, while prohibiting some unfair and abusive practices, the FTC chose not to curtail other troublesome practices, like sending a courier to pick up a payment or allowing telemarketers to access a consumer's checking account via bank draft. These practices, permitted under the FTC's new rule, are used predominately by unscrupulous and illegal telemarketers to bilk countless numbers of victims out of their hard-earned money. Had the FTC curtailed these practices or provided disclosures alerting consumers to the fact that these payment practices might be risky, consumers would have been better off. Indeed, a *bright line* would have helped consumers better understand marketplace hazards. As the FBI recognized, "the best method of combating telemarketing fraud is an educated consumer who recognizes . . . telemarketing fraud."⁴

AARP encourages its members to protect themselves against fraudulent telemarketers targeting older consumers. They need to know that being curious enough to listen to a telemarketer's pitch is analogous to walking down a dark alley late at night or leaving the front door unlocked—it invites trouble. Some older victims are plagued by telephone calls for contests, sweepstakes, products and charitable solicitations. Some victims report receiving as many as three calls a day. Half of the respondents to the AARP survey discussed below reported that they tried to break off the conversation or asked for more time to consider the offer. Despite their best efforts to resist these fraudulent calls, however, some older consumers continue to fall victim to smooth-talking con artists. These fraudulent telemarketers have been known to change their sales pitches or become psychologically abusive to "close the deal."

Telemarketing fraud is a pernicious problem affecting all Americans, particularly older people who are disproportionately victimized. As Congress has recognized, estimates of loss due to telemarketing fraud run as high as \$40 billion a year. Tragically, because it is part of the nation's underground economy, the real cost of telemarketing fraud will never be known. As a result of multiple, recurring scams (sometimes called recovery rooms), public confidence in the legitimacy and reliability of this industry is low. In fact, most telemarketing fraud victims (75%) have generalized their experience to include all telemarketers. These victims say they believe organizations contacting people about prizes or sweepstakes take advantage of people like them.⁵ And, almost 50% of the general population say most telemarketers try to take advantage of consumers.⁶

AARP SURVEY

AARP research includes a survey of almost eight hundred victims of telemarketing fraud. Victims were identified by state and local prosecutors and interviewed at length about their experiences. The major findings of the survey paint a surprising picture of victims. They seem to lack the skills needed to end telephone conversations when they feel some pressure from the person on the other end of the line. Further, many victims will not tell anyone about the fraudulent transaction, even

³ 60 Fed. Reg. 30,406 to 30,428 (1995).

⁴ U.S. Department of Justice, Federal Bureau of Investigation, White-Collar Crimes Section, *Telemarketing Fraud*, Washington, DC [undated].

⁵ Survey Report at page 10.

⁶ See AARP Report on the 1993 Survey of Older Consumer Behavior, AARP, Washington, DC, 1993.

when they are unhappy with the results. Thus, older consumers are truly in need of protection against fraudulent telemarketers.

Despite common misperceptions, victims of telemarketing fraud tend to be well educated, have higher than average incomes, and are socially active members of their communities. This profile stands in stark contrast to the prevailing view of older victims, based on anecdotal evidence, as socially isolated, ill-informed, confused, and committed to old-fashioned ideas about how one should treat strangers on the telephone. Victims of telemarketing fraud express many of the same attitudes about telemarketers as those held by people who do not fall prey to fraudulent schemes.

Perhaps the most compelling insight gained from AARP's research is that even though 90% of older fraud victims surveyed say they have read or heard about cases of telemarketing fraud, almost 70% say it is difficult to identify fraud when it is happening. What's more, fully 40% of the older population as a whole cannot distinguish between a legitimate and a fraudulent telemarketing sales call. This inability to distinguish a legitimate sales pitch from a fraudulent one can have devastating consequences for consumers in general. Older consumers are particularly vulnerable to harm since it may be nearly impossible for many to make up a lifetime's worth of savings.

It is important to understand the motivations of telemarketing fraud victims if we are to develop an effective means of intervention to prevent increasing numbers of older telemarketing fraud victims. AARP's survey utilized marketing analysis to look at several factors (like age, income, and social activities). The following different types of fraud victims were identified:

Open to Anything, 37 percent.—Victims belonging to the largest group are very social. While skeptical about telemarketers, most will participate in a contest or sweepstakes if it doesn't cost too much. Members of this group are more likely to seek advice from family and friends on financial matters. They are younger than other victims, more likely to be married, and are relatively affluent.

You Can't Fool Me, 30 percent.—Victims of this group are wary of telemarketers and are determined to ignore sales pitches by mail and telephone. Still, they are unable to resist sending money off to fraudulent telemarketers. Perhaps because of their inaccurate self-perception as someone who can't be fooled, they think they are better protected against fraud than they really are. They are more likely to be isolated and private, with limited social activities. They are also less likely than other victims to seek the advice of friends or family members when they have a problem.

Polite and Vulnerable, 14 percent.—These victims are the most likely to have recently experienced some trauma in their lives, like the death of a spouse. They are significantly more likely than other victims to listen to the telemarketers. Their sense of loss combined with a feeling that it is not okay to hang up on a telemarketer makes them more welcoming to telemarketers than other victims.

Likes to Buy, 11 percent.—This group is the oldest and the least likely to be married. Most are women, many of whom live alone. They admit they are confused about telemarketing fraud and can't detect it when it is happening. This confusion is coupled with an eagerness to buy and spend, making them particularly vulnerable to fraud.

Naive, 8 percent.—This smallest group of telemarketing fraud victims believes that telemarketers are not out to defraud them despite their experiences. Only 10% are skeptical of most people selling products by telephone. Many more, 62%, deny they are victims as compared with the other victims in study, who deny it at the rate of 17%.

AARP FOCUS GROUPS

AARP also conducted focus groups (in-depth interviews conducted in a group discussion format) around the country. The results provide better understanding of consumers, victims as well as non-victims.

These focus groups demonstrated that older Americans' experiences with telephone solicitations are numerous and diverse. Their perceptions of telemarketing fraud are, nonetheless, remarkably similar. Most say it is difficult to recognize. They are reluctant to call it a serious crime, or to call the fraudulent telemarketer a criminal. They underestimate the occurrence of telemarketing fraud. Whether they have been victims of telemarketing fraud or not, many are willing to listen to people who call them on the telephone offering a prize, selling products, or asking for dona-

tions—even if they suspect the business is illegitimate. Victims, especially, find it difficult, if not impossible, to hang up on telemarketers.

Even those victims who claim to be suspicious of telemarketers are inquisitive and like to try new things. 'Irene', a focus group participant from Philadelphia, expressed this idea when she described her own motivations:

If you are a very curious person like I am—and I'm a very curious person—and I'll say "what have I got to lose." . . . I really want to hear what they have to say.⁷

This insight into the victim of telemarketing fraud is invaluable. Now we know we must convince someone like Irene that curiosity can be costly and that she does have a lot to lose.

As noted previously, AARP's survey demonstrated that older victims have difficulty recognizing telemarketing fraud when it is occurring. (Fully 40% of older consumers stated that they simply don't know the surest way to tell if a telemarketing call is fraudulent.) This skill deficit, coupled with the finding that almost 60% of those surveyed receive at least one telemarketing call a week, makes it clear that consumers need help in sorting out fraudulent from legitimate calls.

CONCLUSION

Because of the complex nature of the telemarketing industry and the special vulnerability of older Americans, there is a continuing need for active oversight at both the Federal and State levels. To this end, AARP urges Federal and State legislators to give law enforcement and regulatory agencies adequate authority and resources to police the marketplace, thereby ensuring integrity, fairness, accuracy, and compliance with existing laws and regulations.

AARP recommends that federal law enforcement agencies be encouraged to continue their innovative investigation and aggressive prosecution of fraudulent telemarketing operations. The combined efforts of the Department of Justice, the Federal Trade Commission, and others, aggressively pursuing fraudulent telemarketers across state and international borders, should effectively deter the growth of this type of fraud. Further, AARP recommends that in addition to existing penalties, telemarketing fraud criminals should be subjected to forfeiture of their ill-gotten gains. This crime is motivated by greed, and if the criminals can't keep money they take from older victims, they may be less likely to engage in this type of activity in the first place.

It is also important for this Committee in its oversight capacity to look ahead to the new technologies and anticipate fraud before the criminals do. The Internet represents a potential breeding ground for new types of fraud. Indeed, *cyber fraud* could have a huge impact on older consumers who are already "surfing the net" in unexpected numbers. These numbers are likely to increase as the population ages.⁸

Aggressive prosecution of telemarketing fraud cases does not diminish the importance of educating older consumers about the risks of telemarketing fraud. AARP has committed significant resources to continuing research on how best to inform our membership about these issues. We want to share our work so that federal, state, and local educational efforts are the best they can be. We recommend that consumer education regarding the risks of telemarketing fraud be identified as a priority for the Department of Justice, the Federal Trade Commission, and other agencies who deal with consumers in the marketplace.

Finally, AARP commends the Committee for its aggressive and far-sighted efforts to call attention to this issue. We believe that increased public and private partnerships, along with Federal and State action, will make an important difference in the lives and financial security of millions of older Americans. Thank you for this opportunity to present AARP's views on this important issue.

Mr. HEINEMAN [presiding]. Thank you, Ms. Brendel.
Mr. Martin.

STATEMENT OF JAMES L. MARTIN, PRESIDENT, 60 PLUS ASSOCIATION

Mr. MARTIN. Thank you. Good morning, Mr. Chairman, and thank you for allowing us to appear here today.

⁷ Focus Group Report, page 3.

⁸ See *Personal Computers and Older Persons: Use and Ownership Trends and Projections*, AARP, Washington, DC, 1995.

The 60 Plus Association is already on record endorsing your legislation, and we feel so strongly about this that we did send a letter to all Members of the House. This legislation has already received broad bipartisan support, we're pleased to see.

I have a formal statement, but I want to just paraphrase here, if I might, just one thing. These scams involving phone calls to seniors, of course, are an outrage, and America should be thankful to know that your subcommittee is holding these hearings.

And in a newsletter story that we're going to send to our half million members later this month, seniors will be shocked to learn more details of the nationwide telemarketing scam that's been discussed here today.

We want to thank you again for holding the hearings. We want to thank everybody on this subcommittee, and especially you, Mr. Heineman, for being a true champion of seniors. We would also like to thank all the previous witnesses here. We haven't gone into any details about scams, and we've heard from a lot of witnesses today. The AARP is to be commended for its work in this effort.

I was particularly struck by the fact that 90 percent of seniors, of course, have heard of these scams, but more like 70 percent really can't identify whether they're legitimate or not. You're dealing with the mentally-infirm, the lonely, the trusting. One out of five seniors, of course, will be struck with debilitating diseases, whether it's Parkinson's, Alzheimer's, or what.

So a previous witness referred to white-collar thugs and swindlers; I'd call them scum and sleaze and whatever. I would close with that.

I would like to introduce the 60 Plus Association's honorary chairman, a former colleague of yours who really needs no introduction, Congressman Roger Zion of Indiana, a long-term, 30-year friend of mine, and I think he has a couple of personal remarks to make.

Mr. ZION. Thank you, Jim.

As a senior citizen, more senior than anyone here, I receive quite a few phone calls, and I haven't taken them seriously until now. I'm going to in the future. Normally, my reaction is, "Thanks so much. I can't use another yacht" or "I appreciate the nice call, but what would I do with another trip," you know, and that's it. In the future I think I'm going to string them along and let them at least spend a lot of money on the phone call, and hopefully find out who they are.

Two of the saddest things that's happened in my mother's life—she's in a nursing home in Milwaukee—when my brother had to take away her car because she couldn't drive too well anymore; he was concerned for her safety, and that was a loss of freedom. And the second thing was when he had to take away her checkbook. That was a real serious day, but he was trying to help organize some material in her room there at the nursing home and found that she was overdrawn on her checking account, and that a whole lot of checks had been written, and I presume many of them were for legitimate organizations. He has no way of knowing. The whole family had to kick in to get her checking account in balance again.

So the point is that there are many people like my mother, and growing like myself, who really aren't competent to evaluate these

things. And, as one who through my mother has seen somebody suffer rather serious financial loss through inability to evaluate them, I'm particularly and personally in favor of H.R. 1499 and so pleased that you folks are doing it.

Thank you very much.

[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF JAMES L. MARTIN, 60 PLUS ASSOCIATION

Good morning, Mr. Chairman, and Members of the Subcommittee, it is an honor to speak with you today.

My name is Jim Martin and I'm the President of the 60 Plus Association. 60 Plus is a three-year-old anti-tax advocacy group that has dedicated itself to repealing the Federal Estate and Gift Tax, the most unfair and confiscatory of all taxes placed upon Senior Citizens and their heirs. Our primary mission is to, as our slogan says, "Protect the Rights of Seniors."

Mr. Chairman, let me start by saying that as a young reporter covering Capitol Hill 34 years ago, 1962-63 and 1964, and then as an Administrative Assistant in the House and Senate for six years to Representative, later Senator, Edward J. Gurney (R-FL), I know the hard work and long hours that go into these hearings.

Today 60 Plus is testifying before your subcommittee to talk about the Consumer Fraud Prevention Act of 1996.

But first, let me say that the 60 Plus Association is already on record endorsing North Carolina Rep. Fred Heineman's Consumer Fraud Prevention Act of 1996. 60 Plus feels so strongly about this legislation that we have sent a letter to all House Members urging them to become co-sponsors. This is the type of important non-partisan legislation which all lawmakers from both parties should endorse.

As a general rule, 60 Plus tends to shy away from more of Washington's rules and regulations, but this is a case where we believe the government is dutifully carrying out Article 1, Section 8 of the United States Constitution. It reads, "The Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States."

It is our opinion that the Congress must provide for the common defense and general welfare of all Americans, and especially seniors who are bilked of thousands each year.

One particular nation wide telemarketing scam involved phone calls where the caller promised you that you have won \$50,000, but to receive the winnings, you must send in \$15,000. Then the caller goes on to say that this money will take care of your loved ones and you can go to your grave knowing that you did the right thing. That you can go and meet God with a clear conscience. When the victim says they don't have that much money, the caller lowers the offer to \$1,000. And if you still don't give in, then the caller threatens the person with a lawsuit. "If you don't send the check we're gonna end up in court. You wanna go to court? You wanna get sued?" threatens the caller.

This kind of lawless behavior should not be tolerated. The FBI and local law enforcement officials arrested 422 people in 15 states in connection with scams like this which cost senior citizens as much as \$40 billion a year.

Well, as a result of these outrageous phone calls, Rep. Heineman has introduced the Consumer Fraud Prevention Act of 1996.

Rep. Heineman's legislation, whole heartily supported by the 60 Plus Association, increases the penalties of those who purposefully defraud the vulnerable in our society and those who utilize international borders to evade prosecution. The bill already has broad bipartisan support.

The legislation has many provisions that will strengthen current law and make it awfully difficult for criminals to continue to prey upon those who are most vulnerable in our society, senior citizens.

Among the bill's many highlights, we've selected the following:

H.R. 1499 directs the US Sentencing Commission to increase penalties for those who purposefully defraud the vulnerable in our society,

H.R. 1499 increases penalties for those who utilize international borders to evade prosecution,

H.R. 1499 requires mandatory victim restitution first, then asset forfeiture, and

H.R. 1499 earmarks property seized from the defendant to be used to fund a national hot line to combat fraud.

Scams involving phone calls to seniors is an outrage and America should be thankful to know that the House Judiciary Subcommittee on Crime is holding hearings on these unlawful activities.

In a newsletter story going out to our 425,000 members this month, seniors will be shocked to learn details of the nationwide telemarketing scam I've just mentioned.

The perpetrators of these sorts of crimes are society's worst offenders and thankfully, under Rep. Heineman's bill, they will receive some of the stiffest penalties the law has ever known. *Nothing less will do.*

Thank you especially, Mr. Chairman, and on behalf of seniors across the country, 60 Plus extends a special thanks to Rep. Heineman, a true champion of seniors!

Mr. HEINEMAN. Thank you for your remarks, Congressman. Welcome.

Mr. Barker, these complaints you're getting, each day and at the end of the year when you sum them up, for the most part, what are they?

Mr. BARKER. The major complaint we get now is the free prize offer. This is diminishing somewhat as a result of crackdown on this sort of activity by various State and Federal agencies, but still ranks as No. 1. "You have won a prize. Ed McMahon is coming to give it to you in person, and we just need to pay the taxes," and getting the money any way they can very quickly and being off with it before you get smart and figure out what you're doing.

Investment fraud is very high. Travel fraud is very high.

Mr. SCOTT. What was the second one?

Mr. BARKER. Investment, various kinds of investment frauds, everything from wireless cable licenses to unregistered securities, gold. The ostrich farming that was mentioned earlier on is, again, a big one. Anything you can convince people they're going to get rich quick on will be a big winner.

Mr. HEINEMAN. And if you had to average out the moneys that were sent relative to these calls, what range, what average range would that be in?

Mr. BARKER. The overall average is \$1,760, is what—but if you're sitting there watching this stuff come in, we get maybe seven or eight \$3,000 to \$5,000 losses reported to us every hour, and a day doesn't go by but what somebody doesn't report to us \$50,000 to \$75,000. And you just watch those individual losses coming in and people who have lost their life savings to these people and then been reloaded and then been subject to these recovery operations; it's terrible misery that these people are facing.

Mr. HEINEMAN. That \$50,000 to \$75,000 range, is that cumulative or one-shot deals?

Mr. BARKER. That would probably be cumulative, over maybe two or three investment deals that they've gotten involved in with a single person.

Mr. HEINEMAN. So in order for someone who is arrested and sentenced to get time, not just probation, he would have to have at least 20 people, 20 big donors, that he's taken money from to reach that \$100,000 floor that you need to reach to get time?

Mr. BARKER. That—I would assume so, yes. One of the things that we do that's kind of interesting is that, when we send these reports, these reports are going out all the time to law enforcement agencies, and they go out as individual reports, but each time we see a repeat offender, that is noted on the report that goes out. So that if we receive 350 complaints against a particular operation,

that information is forwarded to the appropriate law enforcement agency, so that they should know that this is not just a one-shot deal; that there have been a number of complaints about these people and that it certainly warrants some action being taken. And the computer will show cumulative amounts of money, too.

Mr. HEINEMAN. Well, generally, do they use the same scheme over and over?

Mr. BARKER. Yes.

Mr. HEINEMAN. I don't mean against the same senior, but as they move about or as they call about the country, you can recognize them by that common scheme?

Mr. BARKER. To a certain extent, yes. Yes, you will see a common approach, type of prize that they offer, the type of con that they're promoting.

Mr. HEINEMAN. So we really, under the current Federal sentencing laws, we're really giving them a lot of leeway before we can put them in jail?

Mr. BARKER. There would be nothing better than to put some of these people in the slammer, get them out of commission for a while, because as they—and you've got to do it quickly because a lot of them are moving to Canada. We've seen about a 300 percent rise in illegal operations moving to Canada just in the last year, year and a half.

Mr. HEINEMAN. So if we're talking about prevention, probably one of the biggest changes we can make is to deal with prevention by increasing the penalty rather than letting them know they've got \$99,000 to play with before they're going to go to jail?

Mr. BARKER. Yes.

Mr. HEINEMAN. Now, of course, Canada's concerned. Do they have the same problem of telemarketers coming to this country and calling into Canada?

Mr. BARKER. They don't appear to have the same problem we do. It's much more lucrative to direct the calls down here. The Royal Canadian Mounted Police and various provincial police authorities are very good at receiving the information that we send them. They're on the same system as U.S. law enforcement agencies, and they have a database as well that they use. But I'm not really competent to tell you exactly what they're—how they're enforcing it or to what extent they may see some problem with U.S. nationals calling up there.

Mr. HEINEMAN. OK. Do we have any data to tell us whether the people that are calling here are from this country or they're Canadian citizens?

Mr. BARKER. The assumption is that these people are U.S. nationals that have gone up there.

Mr. HEINEMAN. OK. I don't have any further questions.

Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Barker, you heard Mrs. Ritchey say that she had called several different levels of government and nobody particularly seemed interested. I think we've taken care of her particular case. Do you hear similar complaints from the people that call you?

Mr. BARKER. That's—yes, we do. We do hear that, and that's one of the reasons that we started this project, was so that somebody outside of government—

Mr. SCOTT. Who funds your information center or 800 number?

Mr. BARKER. We're part of the National Consumers League, and I also serve as vice president of the National Consumers League. The—

Mr. SCOTT. Do you call people for donations?

Mr. BARKER. No. I go out and scrounge. [Laughter.]

We've been very fortunate. A number of American corporations provide us funding: MCI, AT&T, Visa, Mastercard, American Express, Federal Express, and Citibank. And, as I say, it costs about a half a million dollars a year to keep the doors open.

The National Consumers League went from a very small operation having about four or five employees back in 1990, and then with all of the stuff that I've started with the National Fraud Information Center, we're now up to 19, and our \$400 or \$500 telephone bill that we had each month in 1990 now goes up to about \$8,000, \$10,000 a month, and it's just—it causes shock throughout our business office whenever that comes.

But it's a big problem, and we only wish we could do more.

Mr. SCOTT. You mentioned securities fraud was a big deal. Did the passage of the securities bill that we passed over the President's veto—did you review that to see what effect it might have on securities fraud?

Mr. BARKER. No, I'm sorry, I didn't, no.

Mr. SCOTT. Mr. Thompson, North Carolina has been very active in this area. Have you any—could you go through some specific suggestions as to what the Federal Government needs to be doing in addition to this bill, if anything?

Mr. THOMPSON. Well, I think one thing that's proven to be very helpful with us is the funding that we provided for education in North Carolina. We also try to cooperate with other States in this area. For instance, the video we have on telemarketing fraud. Other States have used that video with their own attorney general giving the pointers on what to do.

So I think anything we could do in that area of education is going to help.

Mr. SCOTT. Well, let me follow up with Ms. Brendel. How do we know education works?

Ms. BRENDL. It must work because ignorance, obviously, is getting people into a lot trouble for not knowing. Further, most of the people who were in the survey kept confirming the fact that they did have a lot of difficulty in developing these skills, and that's part of the educational program.

Mr. SCOTT. Well, after people have gone through the educational program, do you have any evidence that they are more able to deal with this situation?

Ms. BRENDL. Not yet, because we haven't done that much.

Mr. THOMPSON. We're tracking, when we do our programs, all the people that go through and trying to contact them and see what they've done once that happens. Now, of course, education isn't going to be the only thing that solves the problem. I think something that's been echoed here today is there need to be stiffer

criminal penalties for these people. We've chosen to go after them in the civil realm, but I think that they may see that as a cost of doing business.

Mr. SCOTT. Mr. Barker.

Mr. BARKER. Yes, one of the things that we found is that we were giving senior citizens the wrong message. We were saying to them, "Just hang up," and that was having absolutely no effect at all. And in dealing with this issue——

Mr. SCOTT. It was having no effect on the amount because they'd just call somebody else?

Mr. BARKER. Well, it would have no—they just wouldn't hang up. They just will not hang up, even when they should have good reason to believe that the person on the other end of the phone is a crook.

So what we did was we—for example, we had a focus group down in Richmond and we brought people together, and we dealt with this issue. Once these people became aware that this type of activity was a crime, perpetrated by crooks who should be subject to the penalties that you propose, and that there were thousands of these illegal operations around the country at this present time, as soon as we were able to get that message through to them, then their willingness to hang up, their willingness to report, and their ability to withstand immediately increased. And we feel if we can get that message across of what this activity is, that we can really make some inroads, once we're able to get that——

Mr. SCOTT. That's a fairly intensive personal education. The over-the-air—Ms. Brendel, do you want to comment again?

Ms. BRENDL. Yes, I would like to add that the research that AARP is conducting includes tracking the results of education, and we do a great deal of group education as well as individual, a lot of publications and cooperating with the media, cooperating with other groups and other agencies. So I would hope within the next year we might have the beginnings of some very statistical-justified material and information.

Mr. SCOTT. I think probably having some of these tapes played so the people can actually hear how it sounds—I don't know if it would have an effect or not; I would think it would, if some of the talk show people could get hold of them and just play the tapes.

I appreciate it, Mr. Chairman. I think my time is probably up.

Mr. HEINEMAN. Thank you, Mr. Scott.

Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. I'll just sum up very briefly. Roger, it's good to have you with our other panelists. Mr. Chairman, as has been said, I appreciate the panelists being here today.

These sophisticated con artists for the most part do not impose physical harm or physical injury upon the victims, but look at the damage that's done, even though they don't break their arms and break their knees. These people are sleazy.

There's an expression, folks; you North Carolinians may know this. In the Blue Ridge Mountains of North Carolina, the rural mountains in particular, and these native mountain people refer to folks who are unsavory as being "high tacky," not merely tacky, but "high tacky." And, Mr. Chairman, these con artists are "high

tacky." And, as I said at the outset, I'm pleased to be an original cosponsor of your bill, and I hope we can insert some teeth into the jaw of this, and let's take these "high tacky" people and put them where they belong. I think as you said, sir, let them hear the door slam behind them one time, and they may be reluctant to activate those phone calls.

Thank you. Thank you, Mr. Chairman.

Mr. HEINEMAN. Thank you, Mr. Coble.

And, hopefully, hearings like this and legislation like this can make those "high tackies" high-tail it. [Laughter.]

Mr. COBLE. You're from New York, Mr. Chairman, if I may reclaim my time, you've got to say, "high tacky." He has that New York twist. [Laughter.]

Mr. HEINEMAN. I was trying to live that down. [Laughter.]

Thank you, and this will conclude the hearing. I do appreciate everything you've done here today, and know that for future legislation you played a part of it. Thank you.

[Whereupon, at 12:42 p.m., the subcommittee adjourned.]

APPENDIX

STATEMENT OF HON. SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I regret that I will be unable to attend today's hearing regarding telemarketing fraud because of a family medical emergency.

This is an important issue, which merits considerable attention and I commend the Chairman for holding this hearing. I have heard the heartbreaking stories of elderly men and women who have lost their life savings as a result of dangerous telemarketing scams.

Elderly Americans are common targets for fraudulent telemarketers because they are often home alone and willing to talk with callers. Con artists prey on their loneliness and vulnerability and attempt to persuade their elderly victims to send them money. In many cases elderly individuals are bullied and intimidated with threats of a lawsuit if they resist.

Fraudulent telemarketers often claim that the individual has won a valuable prize, and to collect the victim needs to send some money to cover the taxes or shipping charges. Other telemarketers claim they are collecting money for religious or charitable organizations, or they promote phony investment opportunities. Some telemarketers have gone so far as to impersonate private investigators or attorneys, and offer to recover money that the victims have lost to other telemarketers in return for an advance fee.

The Federal Trade Commission estimates that telemarketing fraud costs consumers about \$40 billion a year. I look forward to learning what we can do to protect the nation's consumers from these costly scams.

I hope that today's hearing will shed light on this problem and provide some suggestions as to how we can prevent future victimization. Fraudulent telemarketers prey on the most vulnerable members of our society and they must be stopped.

Thank you.